ETHICS ADVISORY OPINIONS
(2018-1998)

18-1	Is it permissible for a Member or candidate to use campaign funds to pay for his or her attorney's fees?
18-2	May a Member use his or her campaign funds to make a contribution to the South Carolina Public Interest Foundation (a 501(c)(3) organization), provided that neither the Member, his or her family, nor business with which they are associated, derives a personal financial benefit?
18-3	May a Candidate for the House or Member receive campaign contributions in the form of Bitcoin or digital currency?
18-4	May a Member use his title of "Member of the S.C. House of Representatives" for an advertisement in a newspaper?
17-1	Is there a conflict of interest for a Member to sell insurance policies through a competitive bidding process as an agent of an insurance company to local Department of Disabilities and Special Needs Boards and local county hospitals? Is the Member required to abstain from voting on budgetary requests for the DDSN and DDHS?
17-2	Is it acceptable for a Member to use campaign funds to pay for expenses incurred when traveling due to the office the Member holds, including meals, lodging, and mileage when the legislative session has ended? Would it also be acceptable to use campaign funds to pay for travel expenses if the Member is asked to serve as a speaker at an in-state meeting (not sponsored by a lobbyist principal) related to legislative matters?
17-3	May a Member/Lawyer represent a client before a state agency? May the Member/Lawyer also vote on a budget request related to that state agency?
17-4	Is it acceptable for a Member/Lawyer to represent a state agency in a legal matter if the Member/Lawyer's attorney fees and litigation costs are paid for by a governmental insurance operation? May the Member/Lawyer still vote on a budget request related to that state agency since the agency is not paying the legal fees? Is a Member required to abstain from voting during subcommittee and committee meetings and during debate on the House calendar for bills related to the Member's agency client? **(amended October 30, 2017)**
17-5	Is it a conflict of interest for a Member to be employed by the County Treasurer?
17-6	May a Member continue to list under gifts on his or her Statement of Economic Interest "see Delegation office for a list" with the list noting the parking privileges received by the Delegation Members which includes the value, donor, and description of those privileges?
17-7	May a Member use his or her campaign funds to pay reasonable and necessary expenses for transportation, lodging and meals for the Member and his or her spouse while at the following international, national, regional, state or local events: political party conferences, political party conventions, legislative, trade or issues conferences, and speaking engagements?
17-8	May a Member serve on the board of a charitable, non-profit organization? Is it dual office holding for a Member to serve on the board of a charitable, non-profit

	organization?
17-9	May a Member participate in an educational tour to Israel with expenditures paid by a non-lobbyist principal host organization? May a Member use his or her campaign funds to pay for the expenses of this educational tour?
17-10	May a Member continue to serve on the Judicial Merit Selection Commission (JMSC) if his wife plans to file for an open Circuit Court seat that will be screened by the Commission?
17-11	May a Member use his or her campaign funds to make a contribution to the Korean War Veterans Association, Inc. (KWVA) for construction of the Wall of Remembrance at the Korean War Memorial in Washington, D.C.?
17-12	What is the meaning of "material asset" as it pertains to a campaign disclosure report? What type of expenditures made with campaign funds are considered assets of the campaign?
17-13	Is a Legislative Special Interest Caucus (LSIC) considered a "legislative caucus" for purposes of the exemption which allows a lobbyist's principal to provide lodging, transportation, entertainment, food, meals, beverages, or an invitation to a function to groups? May a Member of a LSIC accept an invitation to a function paid for by a lobbyist's principal? May a LSIC accept an invitation from a Section 501(C)(3) entity that is not a registered lobbyist's principal?
17-14	May a Member use his or her campaign funds to purchase door prizes for a town hall or community event? May a Member accept donations for door prizes? May a Member give away door prizes at campaign fundraisers?
17-15	Must a Member report an event which was co-sponsored by several lobbyist's principals that the Member attended as a gift on his or her Statement of Economic Interests? Must a Member report the value of the gift for each lobbyist's principal if each value is at or above the threshold amount?
17-16	May a Member use his or her campaign funds to make a contribution to a state or local political party or political caucus?
16-1	Is there a conflict of interest: (A) when a staffer for the House Legislative Oversight Committee (HLOC) worked for a law firm that was hired by a commissioner on the SC Retirement System Investment Commission, which is the Commission being studied by the HLOC; (B) when a Member's wife has an uncle and cousin that practice law with a commissioner from the Commission; (C) when the staffer on the HLOC serves as a staffer for the HLOC subcommittee for the State Treasurer's office when the State Treasurer also serves as a commissioner on the Commission; (D) when a Member's wife has an uncle and cousin that work with a commissioner, should the Member be able to serve on the HLOC subcommittee for the State Treasurer's office when the State Treasurer also serves as a commissioner on the Commission?
16-2	Is it acceptable to use campaign funds for the following expenditures: (A) Dues for membership in a service-type organization or as a renewing member; (B) Membership at a private club; (C) Dry Cleaning; (D) Member's meal with a constituent; (E) Maintenance for a Member's personal vehicle used for campaigning or office business; (F) Fines and penalties received as a result of office; (G) Gifts for Individual Members; (H) Personal or constituent's living expenses; (I) An Election in a different body; (J) Contributions to charitable organizations, churches, or schools; (K) Sponsorships which include an advertisement and dues; (L) Member's cell phone bill when the cell phone is used for campaigning and House official

	business as well as for personal use; (M) Expenses for Promotional items, Merchandise, or Advertising that contain the Candidate or Member's Name and Office; (N) Office Equipment Expenses; (O) Dues for membership in an organization or as a new member; (P) Clothing; (Q) Gifts or Flowers for Office Staff, House Staff, or Constituents including Gifts, Resolutions, and Cards for Deaths, Births, or other Special Events sent by the Speaker or Members to other Members; (R) Travel expenses and meals for a person, district group, or team being recognized by the House of Representatives; (S) Resolutions and Flags; (T) Signs that benefit the Community; (U) Food or meals for functions that are directly related to the office; (V) Meals and/or beverages for campaign workers; (W) Meals for Members and Staff by a Committee Chairman, Speaker, and Speaker Pro Tempore; (X) Tickets to a political event; (Y) Legal expenses associated with a candidate or Member's campaign; and (Z) Newspapers and News Services?
16-3	Does the receipt of Medicaid payments by the Member's business result in a conflict of interest that requires the Member to abstain from voting on Medicaid issues at any point in the legislative process?
16-4	Can a lawyer/legislator be associated with a law firm that represents clients pursuant to S.C. Code Ann. §§ 8-13-740 and 8-13-745 provided that the lawyer/legislator properly abstains from voting on matters relating to the clients whom the law firm represents?
15-1	Pursuant to 8-13-700, may a member of the House of Representatives, who is also a salaried employee of a technical college, introduce local business people to the continuing education sales department of the technical college?
15-2	Is there a violation of S.C. Code Ann. § 8-13-700 when an officer or member of a House Legislative Caucus refers Caucus business to himself or to a business with which he is associated and from which he makes a profit?
15-3	Is it acceptable to use campaign funds for the following items: (A) donating to the custodial staff for the Blatt Building; (B) purchasing flowers for staff members due to certain events, such as hospitalization, or a death in the staff member's family; and (C) purchasing hearing aid batteries?
14-1	When a member of the House of Representatives uses a personal vehicle for travel related to the campaign or office, what is the appropriate method of reimbursement?
14-2	Whether it would be appropriate for a representative to use campaign funds to reimburse myself for the legal expenses paid with my personal funds associated with the abovementioned legal action?
13-1	Whether candidates who found themselves without primary opposition, as a result of the Supreme Court's rulings, were entitled to both a primary and a general election cycle for purposes of applying the campaign contribution limits established by S.C. Code 8-13-1314 and 1316?
13-2	Whether campaign funds may be used to pay for legal expenses associated with a candidate's campaign?
13-3	Whether a person with an open campaign account must file an updated Statement of Economic Interest form by April 15th and whether a person filing a Statement of Economic Interests form must include state retirement?
13-4	(1) Is it appropriate for a member of the South Carolina General Assembly to request and use the state airplane to transport an out of state witness to testify before a legislative subcommittee? (2) Is it appropriate for a person to receive

	compensation for testimony before a legislative subcommittee without complying with procedures to register as a lobbyist?
06-1	The "45-Day Rule" or the interpretation of S.C. Code Section 8-13-1300(7) and (31)
03-1	Acquiring debt during campaign cycle and after-election relief
02-1	(1) Use of campaign funds for ticket purchase if invitation came only because a Representative. (2) Use of campaign funds to non-political organizations in which invitation to join only because a Representative.
00-1	Use of campaign funds for late penalties regarding campaign disclosure forms and economic interest forms
99-1	Use of campaign funds for donations to charity if donation will result in publication of member's name.
99-2	Member's employment at consulting firm that manages election campaigns and provides public relations services to lobbyist.
99-3	Purchase of computer or other permanent office equipment with campaign funds if used for campaign purposes
98-1	Member works for a law firm that has lobbyist's principal client, does member have to report the relationship if interest is less than 5%?
98-2	Regarding late penalties for Ethics reports, is the report received when mail sent or physical receipt?
98-3	Use of campaign funds to contribute to the Strom Thurmond Monument Committee

House Legislative Ethics Committee

P.O. BOX 11867
519 BLATT BUILDING
COLUMBIA, SC 29211
TELEPHONE: 803-734-3114
FAX: 803-734-8795

ADVISORY OPINION 2018 - 1

The House Legislative Ethics Committee (HEC) received a request from a Member for an advisory opinion. The Member requested clarification as to whether campaign funds can be used to pay a Member or candidate's attorney's fees. For example, the Member explained that if a Member or candidate was under investigation for potential ethics or criminal violations due to the position he held as a Member or candidate, would the Member or candidate be allowed to use his campaign funds to pay for his attorney's fees?

Pursuant to House Rule 4.16C.(4), the Committee renders the following advisory opinion.

DISCUSSION

It is a fundamental principle in common law that there is an absolute presumption of innocence to any accused unless and until guilt is proven beyond any reasonable doubt. See Coffin v. United States, 156 U.S. 432 (1895); Taylor v. Kentucky, 436 U.S. 478 (1978). Both the United States and South Carolina Constitutions also mandate an individual be afforded due process of law prior to the denial of life, liberty, or property. See U.S. Const. art. XIV, § 1; S.C. Const. art. I, § 3. Further, S.C. Code Ann. § 8-13-1348(A) provides:

> No candidate, committee, public official, or political party may use campaign funds to defray personal expenses which are unrelated to the campaign or the office if the candidate is an officeholder nor may these funds be converted to personal use. The prohibition of this section does not extend to the incidental personal use of campaign materials or equipment nor to an expenditure used to defray any ordinary expenses incurred in connection with an individual's duties as a holder of elective office.

Thus, the Member may use his or her campaign funds to pay for expenses, including legal expenses, provided the expenses are related to the office held or a campaign.

Two prior HEC Advisory Opinions, 2013-2 and 2014-2, addressed the issue whether a Member could pay his attorney fees from his campaign funds. Specifically, HEC Advisory Opinion 2013-2, concluded that legal expenditures stemming from lawsuits regarding who should appear on the ballot to insure the integrity of the election "cause legal expenses that likely directly stem from one's election, one's campaign," and, therefore, were proper. In HEC Advisory Opinion 2014-2, the Committee found it was appropriate for a Member to use campaign funds to reimburse himself for the legal expenses paid with his personal funds associated with a legal action challenging the party's decision to place his opponent on the ballot when his opponent had not filed his candidacy paperwork properly. However, in HEC Advisory Opinion 2013-2, the HEC cautioned "that this holding does not reach lawsuits resulting from a candidate's personal misconduct. Like all determinations on whether campaign funds are properly used, this analysis must be fact specific." HEC Advisory Opinions, 2013-2.

The Committee finds that campaign funds should not be used for legal expenses that arise from any case in which the allegations are unrelated to the office held or a campaign. In addition, there may be instances in the civil or criminal area in which a Member or candidate is accused of personal misconduct, including but not limited to, harassment, assault, battery, bribery, etc. In such actions of alleged personal misconduct, legal expenses would not be covered even if they were alleged to have occurred during a campaign or at a location involving the exercise of the duties of a Member's office or a campaign location or campaign event.

While the Committee is bound by the constitutional protections and S.C. Code Ann. § 8-13-1348(A) as cited herein, the Committee urges caution and restraint by Members and candidates with regard to the use of campaign account funds in this area. Rulings on these issues would be highly fact specific and decided on a case by case basis depending on the particular facts associated with each case. As such and although not required, the preference of the Committee is that Members use personal funds for legal expenses related to the office held or a campaign and seek subsequent reimbursement upon said claims or charges being dismssed, nolle prossed, or a finding of not guilty. The Committee also reminds Members and candidates that it retains the right to use all remedies available under the law to seek recovery of campaign funds improperly used by a Member or candidate to cover ineligible legal expenses or campaign-funded legal expenses where the Member or candidate is subsequently convicted of unlawful conduct.

CONCLUSION

In summary, a Member or candidate may use campaign funds to pay attorney fees if under investigation related to the office held or a campaign. However, the Committee could seek recovery of said funds from the Member or candidate upon a guilty plea or conviction of wrongdoing. In such actions of alleged personal misconduct, legal expenses would not be covered even if they were alleged to have occurred during a campaign or at a location involving the exercise of the duties of a Member's office or a campaign location or campaign event.

Further, where a Member or candidate is under a subpoena related to the office held or a campaign, the Member or candidate may use campaign funds for legal fees and other expenses incurred and necessary to comply with said subpoena.

Adopted February 6, 2018.

House Legislative Ethics Committee

P.O. BOX 11867
519 BLATT BUILDING
COLUMBIA, SC 29211
TELEPHONE: 803-734-3114
FAX: 803-734-8795

ADVISORY OPINION 2018 - 2

The House Legislative Ethics Committee (HEC) received a request from several but not all the Members of a local delegation for an advisory opinion. The Members questioned whether they can use their individual campaign funds to make a contribution to the South Carolina Public Interest Foundation (Foundation), a South Carolina Not for Profit Corporation founded in 2005 and in good standing with the state of South Carolina at the time of this inquiry. The inquiry is whether they can make a contribution to this not for profit corporation for legal fees associated with the lawsuit brought against Greenville Health System (GHS). They explained in their "concerns were with GHS's change of delegation of authority based on Act 432 of 1947." Specifically, they stated that "the issue with GHS [wa]s concerning assets including property as well as responsibilities designated by Act 432 that were transferred away by restructuring." They further explained that their actions were based upon their duty and responsibility as elected Representatives of [their] respective areas to act upon [their] constituents behalf."

Pursuant to House Rule 4.16C.(4), the Committee renders the following advisory opinion.

DISCUSSION

Act 432 of 1947

Initially, some background on Act 432 of 1947[1] is necessary in order to address the Members' question as noted above. The Act was passed by the General Assembly after it found that there existed a lack of hospital facilities in Greenville County and determined to remedy the condition. Section 1, Act 432 of 1947. The legislature's investigation found that the existing municipally-owned hospital, constructed and paid for by the taxpayers of the City of Greenville was adequate for residents of the City of Greenville but not the residents of the entire County. *Id.*

[1] It appears that Act 432 has been amended numerous times.

The General Assembly ascertained that the most practical and economical solution would be for the County of Greenville to take over the hospital to expand its facilities and operate it for the benefit of all Greenville County residents. *Id.* In doing so, certain conditions were to be met, including conveyance "to an independent Board, free from the control of the corporate authorities of the City or the County and charged with duty of operating said hospital and its expanded facilities for the benefit of the taxpayers and residents of Greenville County." *Id.* at 1146. Thus, this Act created a special purpose district of this State. The County delegation has authority to appoint members to the Board. *Id.* at 1150.

The Foundation representing plaintiffs, among whom were several legislators from the Greenville County Delegation, filed suit against the GHS and several other defendants stating that "this case addresses the GHS Trustees' abdication of government over a special purpose district, and the unconstitutional conveyance of public assets worth several billion dollars to private entities." See, Supplemental and Amended Complaint, Court of Common Pleas, Greenville County, Civil Action No. 2016-CP-23-05148, p. 1, filed on February 19, 2018. The lawsuit alleged that the Members of the Greenville Delegation had standing to sue as the members of the Delegation as the Delegation had the right to select the trustees to govern, operate, and maintain GHS, known as Old GHS in the complaint. See Paragraph 14, Supplemental and Amended Complaint, Court of Common Pleas, Greenville County, Civil Action No. 2016-CP-23-05148, p. 3. According to Paragraph 15, the defendants leased and otherwise conveyed "substantially all of old GHS assets, operations, maintenance, governance, and authority to other new, private entities over which the Old GHS Board has no authority." *Id.* at p. 4. Thus, the Supplemental and Amended Complaint alleged that the governance of the old GHS, entrusted to the GHS Board of Trustees by Act 432 of 1947, was a duty that was not delegable under the law of South Carolina and that the Board could not simply convey away that responsibility to a private, self-selected, self-perpetuating board, with no connection to Greenville County, and no accountability to the people of Greenville County and their elected representatives. *Id.* at pp. 4-8.

Use of Campaign Funds

S.C. Code Ann. § 8-13-1348(A) provides:

> (A) No candidate, committee, public official, or political party may use campaign funds to defray personal expenses which are unrelated to the campaign or the office if the candidate is an officeholder nor may these funds be converted to personal use. The prohibition of this subsection does not extend to the incidental personal use of campaign materials or equipment nor to an expenditure used to defray any ordinary expenses incurred in connection with an individual's duties as a holder of elective office.

S.C. Code Ann. § 8-13-1348(A) (emphasis added).

Previously issued House Ethics Committee Advisory opinions have addressed the issue of donations of campaign funds to charitable organizations. House Ethics Committee Advisory Opinion 2016-2, known as the Laundry List opinion, found that contributions to charitable organizations, including churches and schools, was a permissible campaign expenditure as it was the type incurred in relation to the office held. However, the Committee noted that "the candidate

or member may not contribute campaign funds to any charitable organization or church which the candidate, the Member, their immediate family or business with which they are associated, derive a personal and financial benefit." House Ethics Committee Advisory Opinion 2016-2, Section II, Subsection 2, pages 5-6.[2]

House Ethics Committee Advisory Opinion 2017-11 reached a similar conclusion allowing the donation of campaign funds to the Korean War Veterans Association, Inc. (KWVA) for construction of the Wall of Remembrance (Wall) at the Korean War Memorial in Washington, D.C. KWVA met the charitable purposes component for the donation to be permissible in conjunction with the admonition that the candidate or Member could not make a donation to a charitable organization in which the candidate or Member, his immediate family, or business with which they are associated, derives a personal and financial benefit.

The Committee notes that the State of California follows a similar rule regarding use of campaign funds for charitable purposes: campaign funds may be donated to a nonprofit corporation if (1) the organization is a bona fide charitable, educational, civic, religions, or similar tax exempt, nonprofit organization; (2) the donation is reasonably related to a political, legislative, or governmental purpose; and (3) the donation will not have a material financial effect on the candidate, the candidate's immediate family or those closely involved in the campaign's finances.[3]

In the instant case, the Foundation is a 501(c)(3) organization as designated under the Internal Revenue Code. The organization is "a public service organization whose goal is defending South Carolina's Constitution from violation by governments, deterring violations of its statutory and common law by governments and promoting the rule of law."[4] Specifically, the Foundation "uses litigation rather than political persuasion to meet its goals." *Id.*

Therefore, the Committee finds that since the Foundation is a 501(C)(3) organization and none of the Delegation Members, their immediate family, or the business with which they are associated, derive a personal and financial benefit, then it is permissible to use their campaign funds to make a contribution to the Foundation.

CONCLUSION

In summary, each Member of the local delegation may use his or her campaign funds to make a contribution to the Foundation, a 501(c)(3) organization, provided that neither the Member, his or her immediate family, nor business with which they are associated, derives a personal and financial benefit. However, the Member should specifically note on his or her campaign disclosure report that it is an expenditure to a charitable organization, that is, the Foundation.

Adopted March 22, 2018.

---

[2] Senate Ethics Opinion 1997-2 noted that "charitable giving and charitable good works is a longstanding function of elected officials, especially Members of the Senate of South Carolina."

[3] *Donating Campaign Funds to Non-Profits Under the Political Reform Act*, INST. FOR LOCAL GOV'T, http://www.ca-ilg.org/sites/main/files/file-attachments/resources__surplus_campaign_funds.pdf

[4] South Carolina Public Interest Foundation, http://www.carpenterlawfirm.net/sloansscpif.php.

House Legislative Ethics Committee

P.O. BOX 11867
519 BLATT BUILDING
COLUMBIA, SC 29211
TELEPHONE: 803-734-3114
FAX: 803-734-8795

ADVISORY OPINION 2018 - 3

The House Legislative Ethics Committee (Committee) received a request from a House Candidate for an advisory opinion questioning whether he or she may receive campaign contributions in the form of Bitcoin. The candidate explained that he or she has a supporter who has asked to contribute in cryptocurrency to the candidate's campaign as the supporter is paid and purchases primarily using Bitcoin. The candidate noted that the potential supporter deals chiefly in Bitcoin whereby most transactions for which he needs U.S. dollars are taxed for capital gains at exchange. The candidate questioned (1) what is legally required to collect donations in Bitcoin, and (2) how candidates are supposed to report such contributions. The candidate further explained that he or she understands the need to collect all necessary donor information required for traditional contributions prior to receiving the Bitcoin.

Pursuant to House Rule 4.16C.(4), the Committee renders the following advisory opinion.

DISCUSSION

This issue is a matter of first impression for the Committee. "Bitcoin" is a privately issued currency that was created in 2009. U.S. Gov't Accountability Office, GAO-13-516, Virtual Economies and Currencies 5 (2013), *available at* http://www.gao.gov/assets/660/654620.pdf ("GAO Report"). According to the Uniform Law Commission's proposed Regulation of Virtual Currency Businesses Act, "virtual currency can be simply defined as a form of electronic value, the value of which depends on the market. It is not backed by government (so that it lacks status as legal tender)." Bitcoins "act as real world currency in that users pay for real goods and services...with bitcoins as opposed to U.S. dollars or other government issued currencies." U.S. Gov't Accountability Office, GAO-13-516, Virtual Economies and Currencies 5 (2013), *available at* http://www.gao.gov/assets/660/654620.pdf ("GAO Report"). Bitcoins can be used to buy merchandise anonymously and are often bought as an investment that people hope will go up in

value based on the market. *What is Bitcoin?*, CNN tech, http://money.cnn.com/infographic/technology/what-is-bitcoin/ (last visited Apr. 4, 2018). Each bitcoin transaction is public in that it is added to a "block chain," which is a public ledger of all bitcoin transactions ever made. Although bitcoin transactions, identified by the addresses to and from which bitcoins are transferred, are public in the block chain, the transactors are not identified. A bitcoin user's real-life identity, IP address, and even country of operation "cannot be reliably traced to a real human by an auditor of ordinary technical skill." U.S. Gov't Accountability Office, GAO-13-516, Virtual Economies and Currencies 5 (2013), *available at* http://www.gao.gov/assets/660/654620.pdf ("GAO Report").

In 2014, the Federal Election Commission (FEC) issued an advisory opinion regarding the issue of political campaigns accepting bitcoin contributions. Make Your Laws PAC, Inc. (MYL) requested an advisory opinion from the FEC concerning the PAC's proposed acceptance, purchase, and disbursement of bitcoins under the Federal Election Campaign Act of 1971. In the FEC Advisory Opinion 2014-02, May 8, 2014, MYL proposed to accept up to a total of $100 in bitcoins as contributions to its contribution and non-contribution accounts and accept the bitcoins only through an online form on which each bitcoin contributor, regardless of the proposed contribution amount, would have to provide his or her name, physical address, occupation, and employer. MYL also requested that each bitcoin contributor affirm that he or she owned the bitcoins that he or she will contribute and to affirm that he or she is not a foreign national. MYL noted that only after the bitcoin contributor had provided identity and ownership information, and associated affirmations, will the committee send that contributor a one-time only "linked address," a bitcoin address that identifies the individual transaction, to use to send the bitcoins. *Id.* at pp. 2-3.

In their response, the FEC concluded that the requestor may accept bitcoin contributions as proposed in its advisory opinion request and supplemental filings subject to valuation and reporting procedures similar to those that the FEC has previously recognized in analogous circumstances. FEC Adv. Op. 2014-02, p. 3. The Commission noted that bitcoins are "money or 'anything of value' within the meaning of the [Federal Election Campaign] Act [of 1971] and that MYL may accept contributions as it proposes pursuant to the identification, deposit, and valuation procedures MYL described in the opinion." *Id.* at 4 (emphasis added). The FEC determined that "MYL's proposal, including the attestations and linked address, adequately addresse[d] MYL's obligations to determine the eligibility of its contributors as required by the Act and Commission regulations." *Id.* at 5. The Commission also made the following findings. The FEC noted that contributions of bitcoins need not be deposited in a campaign account within 10 days of receipt as required under Federal law. *Id.* at 6. "Like securities that a political committee may receive into and hold in a brokerage account, bitcoins may be received into and held in a bitcoin wallet until [MYL] liquidates them." *Id.* The FEC held that "a political committee that receives a contribution in bitcoins should value that contribution based on the market value of bitcoins at the time the contribution is received." *Id.* (emphasis added). The initial receipt of bitcoins as contributions, should be reported like in-kind contributions. *Id.* at 8 (emphasis added). MYL [and other political committees] "must treat the full amount of the donor's contribution as the contributed amount for purposes of limits and reporting provisions of the Act," even though MYL may receive a lesser amount because of any usual and normal processing fees. *Id.* at 9.

Although the FEC permitted acceptance of Bitcoin contributions by political campaigns for Federal public office through its advisory opinion in 2014, few states have allowed this

practice. Tennessee is one of the few states that allows candidates and political campaign committees to accept digital currency as a contribution. In 2015, the state of Tennessee passed Section 2-10-113 which provides:

> (a) A candidate or political campaign committee is allowed to accept digital currency as a contribution. Digital currency shall be considered a monetary contribution with the value of the digital currency being the market value of the digital currency at the time the contribution is received.
> (b) Any increase in the value of digital currency being held by a candidate or political campaign committee shall be reported as interest on any statement filed pursuant to § 2-10-105.
> (c) A candidate or political campaign committee must sell any digital currency and deposit the proceeds from those sales into a campaign account before spending the funds.

Tenn. Code Ann. § 2-10-113 (2015). To allow for this change, the state also amended Section 2-10-102(4) to include "digital currency" in its definition of "contribution."

Other states like New Hampshire and Vermont have passed laws to update their money transmission rules and regulations to include "virtual currency." *New Hampshire Governor Signs Bitcoin MSB Exemption Law*, Coindesk, Jun. 7, 2017, https://www.coindesk.com/new-hampshire-governor-signs-bitcoin-msb-exemption-law/; *Vermont Law Adds Bitcoin as 'Permissible Investmen' for MSBs*, Coindesk, May 8, 2017, https://www.coindesk.com/vermont-law-bitcoin-msbs-investment/. However, in response to a request from a candidate questioning whether it was legal to accept bitcoin campaign contributions, the Kansas Governmental Ethics Commission determined that "the digital currency known as bitcoin is too secretive to be allowed as a form of campaign contributions in state and local elections." *Bitcoin can't be used for campaign contributions: Kansas Regulators*, Fox Business, Oct. 26, 2017, https://www.foxbusiness.com/politics/bitcoin-cant-be-used-for-campaign-contributions-kansas-regulators. *See also Worse than 'the Russians': Kansas Prohibits Bitcoin Campaign Contributions*, CNN, Oct. 27, 2017, https://www.cnn.com/worse-than-the-russians-kansas-panel-prohibits-bitcoin-campaign-contributions/. The Kansas Ethics Commission Executive Director noted that "there is no physical manifestation of this currency in any way. It's just alphanumeric characters that exist only online. It is not backed by any government. The value is subjective and highly volatile." *Id.*

The S.C. Ethics Act Section 8-13-100(9) provides the following definition for "contribution":

> (9) "Contribution" means a gift, subscription, loan, guarantee upon which collection is made, forgiveness of a loan, an advance, in-kind contribution or expenditure, a deposit of money or anything of value made to a candidate or committee, as defined in Section 8-13-1300(6), for the purpose of influencing an election; or payment or compensation for the personal service of another person which is rendered for any purpose to a candidate or committee without charge. "Contribution" does not include volunteer personal services on behalf of a candidate or committee for which the volunteer receives no compensation from any source.

S.C. Code Ann. § 8-13-100(9). Unlike Tennessee, current S.C. law does not include "virtual" or "digital currency" in its definition of contribution. Thus, the Committee determines that it is not permissible for candidates for and Members of the S.C. House of Representatives to receive campaign contributions in the form of Bitcoin or other digital currency. The Committee notes that there are many issues that need to be resolved regarding the acceptance of Bitcoin as a contribution to a political campaign for House office. Therefore, it is the recommendation of the Committee that, should this practice be permitted in South Carolina, it should be done through legislation rather than through an HEC advisory opinion.

CONCLUSION

In summary, the Committee finds that no Bitcoin may be accepted as a campaign contribution at this time.

Adopted April 11, 2018.

House Legislative Ethics Committee

P.O. BOX 11867
519 BLATT BUILDING
COLUMBIA, SC 29211
TELEPHONE: 803-734-3114
FAX: 803-734-8795

ADVISORY OPINION 2018 - 4

The House Legislative Ethics Committee (HEC) received a request from a Member for an advisory opinion. The Member requested a determination whether it was a violation of the Ethics law for his legal business' advertisement in a local newspaper to state: "Former prosecutor with over 20 years of trial experience and member of the SC House of Representatives." He noted that he has run this ad in his local newspaper without complaint for the last six years. Specifically, he questioned whether it is considered a violation of the law prohibiting using one's office for financial gain.

Pursuant to House Rule 4.16C.(4), the Committee renders the following advisory opinion.

DISCUSSION

Pursuant to the Rules of Conduct, S.C. Code Ann. Section 8-13-700 provides:

> (A) No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a family member, an individual with whom he is associated, or a business with which he is associated. This prohibition does not extend to the incidental use of public materials, personnel, or equipment, subject to or available for a public official's, public member's, or public employee's use that does not result in additional public expense.
>
> (B) No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a family member, an individual with whom he is associated, or a business with which he is associated has an economic interest. . . .

Section 8-13-700. At the outset, the Committee notes that it is a fact that the Member was elected and has served in the S.C. House of Representatives (House) for several years. The fact that he holds "official office" does not prohibit him from stating that he is a "Member of the SC House of Representatives" in an advertisement for the profession or business in which he is employed. It is a title that he has earned by his election to the House.

Accordingly, the Committee finds that the Member's legal advertisement which noted that he was a Member of the House does not violate the Rules of Conduct. Furthermore, the Committee notes that any Member of the House could note this title in an ad the Member purchases for dissemination to the public.

CONCLUSION

In summary, a Member's use of his title of "Member of the S.C. House of Representatives" for an advertisement in a newspaper was not a violation of the Rules of Conduct found in Section 8-13-700(A)-(B).

Adopted April 18, 2018.

House Legislative Ethics Committee

P.O. BOX 11867
519 BLATT BUILDING
COLUMBIA, SC 29211
TELEPHONE: 803-734-3114
FAX: 803-734-8795

ADVISORY OPINION 2017-1

The House Legislative Ethics Committee (HEC) received a request from a Member for an advisory opinion regarding selling insurance to a quasi-governmental agency. The Member explained that he works for an insurance company which has a parent company. He noted that he has no financial interest in either company. The Member reported that he is currently paid a salary but effective April 2017, the insurance company will compensate him on a commission basis. Specifically, he questioned whether, pursuant to the Ethics Rules of Conduct, he could sell insurance policies to local Department of Disabilities and Special Needs (DDSN) Boards and he noted that he could abstain from any vote on a budgetary request for DDSN. He also questioned whether he could sell insurance policies to county hospitals and he explained that he could abstain from any vote on a budgetary request for the Department of Health and Human Services (DHHS). The Member noted in both instances that he submits a proposal to sell the insurance to either entity during a competitive bidding process. He also questioned whether he can serve as the agent for the insurance company selling insurance policies in the two situations discussed above.

Pursuant to House Rule 4.16C.(4), the Committee renders the following advisory opinion. The Member may sell insurance policies as an agent of an insurance company to local DDSN Boards and local county hospitals. He is not required to abstain from voting on matters related to DDSN or DHHS as he meets the large class exemption pursuant to the definition of economic interest. S.C. Code Ann. § 8-13-100 (11)(b) (2011). Specifically, the Committee observes that the Member, as a compensated agent uses the competitive bidding process to submit insurance proposals, and, thus, does not have an interest distinct from the general public.

DISCUSSION

DDSN Boards

Initially, some background on DDSN and its interplay with local DDSN Boards is necessary in order to address the Member's question related to selling insurance policies to local

DDSN Boards. DDSN is a SC state agency which "serves persons with intellectual disabilities, autism, head and spinal cord injury, and conditions related to each of those four disabilities." http://www.ddsn.sc.gov/about/Pages/OurMission.aspx; see also S.C. Code Ann. § 44-20-250. "DDSN provides services to the majority of eligible individuals in their home communities through contracts with local service-provider agencies. Many of these agencies are called Disabilities and Special Needs (DDSN) Boards, and they serve every county in South Carolina. There are also other qualified service providers available in many locations around the state." (emphasis added). http://www.ddsn.sc.gov/services/Pages/default.aspx.

Pursuant to S.C. Code Ann. § 44-20-380, DDSN Boards, receive funding as follows:

> (A) County disabilities and special needs boards are encouraged to utilize lawful sources of funding to further the development of appropriate community services to meet the needs of persons with intellectual disability, related disabilities, head injuries, or spinal cord injuries and their families.
> (B) County boards may apply to the department [DDSN] for funds for community services development under the terms and conditions as may be prescribed by the department. The department shall review the applications and, subject to state appropriations to the department or to other funds under the department's control, may fund the programs it considers in the best interest of service delivery to the citizens of the State with intellectual disability, related disabilities, head injuries, or spinal cord injuries.
> (C) Subject to the approval of the department, county boards may seek state or federal funds administered by state agencies other than the department, funds from local governments or from private sources, or funds available from agencies of the federal government. The county boards may not apply directly to the General Assembly for funding or receive funds directly from the General Assembly.

(emphasis added). S.C. Code Ann. § 44-20-380. Thus, DDSN Boards do not receive direct funding from the General Assembly. The Committee notes that DDSN Board may receive some reimbursement for services provided by DDSN.

County Hospitals

It is the Committee's understanding that the county hospitals in question have a local governing board which would authorize the purchase of any insurance policy. Specifically, the Committee learned through the SC Hospital Association the board of the local hospital would discuss the purchase of any insurance policies either during the budget approval process or a separate presentation. Again, the Committee has learned this is not specifically structured for all hospitals and is determined by the hospital itself through hospital policy and procedures. The requirement for approval by county council is rare, but would be hospital specific. Thus, it often appears that the local hospital governing board determines what insurance policy to purchase. See generally, Sections 44-7-1430, -1440.

Further, local county hospitals may receive reimbursement for Medicaid programs. However, the local county hospitals do not acquire budget appropriations. See discussion of a Member's business receiving Medicaid reimbursement as addressed in House Legislative Ethics Committee Advisory Opinion 2016-3.

Applicable Law

Pursuant to the Rules of Conduct regarding conflicts of interest in the Ethics, Government, Accountability, and Campaign Reform Act of 1991, S.C. Code Ann. § 8-13-700 provides:

> (A) No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a family member, an individual with whom he is associated, or a business with which he is associated. This prohibition does not extend to the incidental use of public materials, personnel, or equipment, subject to or available for a public official's, public member's, or public employee's use that does not result in additional public expense.
> (B) No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a family member, an individual with whom he is associated, or a business with which he is associated has an economic interest. A public official, public member, or public employee who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a family member, an individual with whom he is associated, or a business with which he is associated shall:
> (1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision:
> (2) if the public official is a member of the General Assembly, he shall deliver a copy of the statement to the presiding officer of the appropriate house. The presiding officer shall have the statement printed in the appropriate journal and require that the member of the General Assembly be excused from votes, deliberations, and other action on the matter on which a potential conflict exists;
> . . .

(emphasis added). S.C. Code Ann. § 8-13-700. A business with which a person is associated is defined as "a business of which the person or a member of his immediate family is a director, an officer, owner, employee, a compensated agent, or holder of stock worth one hundred thousand dollars or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class." (emphasis added). Section 8-13-100(4).

> Further, as used in the Act, "economic interest" means:
> (a) an interest distinct from that of the general public in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a public official, public member, or public employee may gain an economic benefit of fifty dollars or more.
> (b) This definition does not prohibit a public official, public member, or public employee from participating in, voting on, or influencing or attempting to influence an official decision if the only economic interest or reasonably foreseeable benefit that may accrue to the public official, public member, or public employee is incidental to the public official's, public member's, or public employee's position or which accrues to the public

official, public member, or public employee as a member of a profession, occupation, or large class to no greater extent than the economic interest or potential benefit could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class.

(emphasis added). S.C. Code Ann. § 8-13-100(11).

In the instant scenario, it is clear that the Member does not have any ownership interest in the insurance company, the business with which he is associated, but he is a compensated agent. In SEC AO2000-004, page 4, the State Ethics Commission defined a "compensated agent" as "any ongoing client relationship in which the public official, public member, or public employee, receives compensation for services rendered."

Thus, in each scenario, the Member submits a competitive bid to sell the insurance policy to each entity described above. Therefore, he does not receive an interest distinct from that of the general public, as defined in "economic interest." Moreover, there is no direct funding to either the DDSN Board or local county hospitals during the budgetary process.

Also, the compensated agent, who is a public official and is selling insurance products to a quasi-governmental agency, is not required to abstain from voting on budgetary requests pursuant to Section 8-13-700(B) for DDSN or DHHS. Even if it appears that the Member may have a conflict of interest, the large class exception permitted in S.C. Code Ann. § 8-13-100(11)(b) allows Members of a profession, occupation, or large class to participate in and vote on decisions that would have an economic interest to them because of the profession, occupation, or large class to which they belong. The economic interest or benefit must be such as could have been reasonably foreseen to accrue to anyone in that profession, occupation, or large class. In the instant situation, it appears that the Member who is selling insurance policies meets the large class exemption.

CONCLUSION

In summary, the Member as a compensated agent uses the competitive bidding process to submit insurance proposals, and, thus does not have an interest distinct from the general public. Also, the Member, a compensated agent of an insurance company, is not required to recuse himself from a vote on matters related to DDSN or DHHS. The DDSN Boards and local county hospitals to whom he competitively sells insurance products do not receive direct budgetary funding from the South Carolina General Assembly.

Adopted January 25, 2017

House Legislative Ethics Committee

P.O. BOX 11867
519 BLATT BUILDING
COLUMBIA, SC 29211
TELEPHONE: 803-734-3114
FAX: 803-734-8795

ADVISORY OPINION 2017 - 2

The House Legislative Ethics Committee (HEC) received a request from a Member for an advisory opinion related to the use of his campaign funds. Specifically, the Member explained that he travels to Columbia for meetings which are related to the office he holds when the legislative session is over and he does not receive any compensation by per diem[1] or subsistence. Specifically, the Member requested that the Committee find that he could use his campaign funds to pay for any related expenses for the trip, that is, meals and lodging if the meeting involves an overnight stay, and mileage. The Member noted that he does not request approval from the Speaker for nor seeks reimbursement of these expenses. The Member also requests that he be able to use his campaign funds to pay for travel expenses if he is asked to serve as a speaker at an in-state meeting related to legislative matters. The Member noted that this meeting is not sponsored by a lobbyist principal.

Pursuant to House Rule 4.16C.(4), the Committee renders the following advisory opinion. The Committee finds that the Member may use his campaign funds to pay for the costs associated with travel for a meeting related to the office he holds, such as, meals, lodging, and mileage when legislative session is over and if he does not receive any authorized per diem or subsistence for the meeting. The Member may also use campaign funds to pay for travel expenses if he is asked to serve as a speaker at an in-state meeting related to legislative matters. However, the Member must itemize these expenditures on his applicable Campaign Disclosure report.

DISCUSSION

[1] Per Diem is defined as "an allowance paid to your employees for lodging, meals, and incidental expenses incurred when traveling. This allowance is in lieu of paying for their actual travel expenses." https://www.irs.gov/pub/irs-regs/perdiembkg&a.pro.pdf https://www.irs.gov/pub/irs-regs/perdiembkg&a.pro.pdf

As background, House Members are permitted to receive the following reimbursements according to Act 284, H 5001 (known as the Budget Bill), Part 1B, 91.4. (LEG: Subsistence/Travel Regulations):

(A) Members of the General Assembly shall receive subsistence for each legislative day that the respective body is in session and in any other instance in which a member is allowed subsistence expense. No member of the General Assembly except those present are eligible for subsistence on that day. Legislative day is defined as those days commencing on the regular annual convening day of the General Assembly and continuing through the day of adjournment sine die, excluding Friday, Saturday, Sunday, and Monday.

(B) Standing Committees of the Senate and House of Representatives are authorized to continue work during the interim; however, House members must receive advanced approval by the Speaker of the House and Senate members must receive advanced approval by the President Pro Tempore of the Senate or Standing Committee Chairman to meet. If such advanced approval is not received, the members of the General Assembly shall not be paid the per diem authorized in this provision. When certified by the Speaker of the House, President Pro Tempore of the Senate, or Standing Committee Chairman, the members serving on such committees shall receive a subsistence and mileage at the rate provided for by law, and the regular per diem established in this act for members of boards, commissions, and committees while attending scheduled meetings. Members may elect to receive actual expenses incurred for lodging and meals in lieu of the allowable subsistence expense. The funds for allowances specified in this proviso shall be paid to the members of the Senate or House of Representatives from the Approved Accounts of the respective body except as otherwise may be provided.

. . .

(D) Members of the Senate and the House of Representatives when traveling on official State business shall be allowed a subsistence and transportation expenses as provided for by law, and the regular per diem established in this act for members of boards, commissions, and committees upon approval of the appropriate chairman. When traveling on official business of the Senate or the House of Representatives not directly associated with a committee of the General Assembly, members shall be paid the same allowance upon approval of the President Pro Tempore of the Senate or the Speaker of the House of Representatives. In either instance, the members may elect to receive actual expenses incurred for lodging and meals in lieu of the allowable subsistence expense. The funds for the allowances specified in this proviso shall be paid from the Approved Accounts of the Senate or the House of Representatives or from the appropriate account of the agency, board, commission, task force or committee upon which the member serves.

(E) Members of the House of Representatives shall not be reimbursed for per diem, subsistence, or travel in connection with any function held outside of the regular session of the General Assembly unless prior approval has been received from the Speaker of the House.

(F) Notwithstanding any other provision of law, subsistence and mileage reimbursement for members of the General Assembly shall be the level authorized by the Internal Revenue Service for the Columbia area. Provided, in calculating the subsistence reimbursement for members of the General Assembly the reimbursement rate for the lodging component shall be the average daily rate for hotels in the Columbia Downtown

area as defined by the Columbia Metro Convention and Visitor's Bureau for the preceding fiscal year.

Act 284, H 5001, Part 1B, 91.4. (emphasis added). Thus, when a Member receives subsistence, it is for lodging and meals. Per diem is received in lieu of a salary. In the instant scenario, the Member is not reimbursed his costs associated with attending the meeting held when the legislature is not in session.

Further, S.C. Code Ann. § 8-13-1348(A) provides:

> (A) No candidate, committee, public official, or political party may use campaign funds to defray personal expenses which are unrelated to the campaign or the office if the candidate is an officeholder nor may these funds be converted to personal use. The prohibition of this subsection does not extend to the incidental personal use of campaign materials or equipment nor to an expenditure used to defray any ordinary expenses incurred in connection with an individual's duties as a holder of elective office.

S.C. Code Ann. § 8-13-1348(A)(1991 as amended) (emphasis added).

As noted previously, the State Ethics Commission (SEC) explained that "the terms 'personal' and 'unrelated to the campaign'" with regard to expenditures, are "not defined in the Ethics Act and the Act itself provides no clear guidance on what is and what is not an acceptable expenditure from the campaign funds." See SEC AO2016-004, p. 2 (January 20, 2016).

Additionally, House Ethics Committee Advisory Opinion 2015-3 utilized Committee Advisory Opinion 92-3, for guidance on a test to evaluate the permissibility of a campaign expenditure. It stated: "Each expenditure should be judged upon whether it is an ordinary office or campaign related expenses or instead a personal expense not connected to the ordinary duties of office." Committee Advisory Opinion 92-3 (emphasis added).

In the instant scenario, the Member would not have the additional expense for meals, lodging, and mileage after the legislative session ended for attending legislative-related meetings with but for the office the Member holds. Thus, it is connected to the ordinary duties of the office as a Member. Also, the Member also does not accept any per diem or subsistence, even if permitted, for participating in the meetings. Therefore, he may use his campaign funds to pay for these additional expenses. The Member may use his campaign funds, as well, for travel expenses if he is asked to serve as a speaker at an in-state meeting related to legislative matters since this is part of the ordinary duties of his office.

CONCLUSION

In summary, the Member may use his campaign funds to pay for meals and lodging if the meeting involves an overnight stay, and mileage for legislative related meetings that occur after session has ended. The Member does not request approval from the Speaker for nor seeks reimbursement of these expenses. The Member may use his campaign funds to pay for travel expenses if he is asked to serve as a speaker at an in-state meeting related to legislative matters.

Furthermore, the Member must itemize these expenditures on his applicable Campaign Disclosure report.

Adopted March 1, 2017

House Legislative Ethics Committee

P.O. BOX 11867
519 BLATT BUILDING
COLUMBIA, SC 29211
TELEPHONE: 803-734-3114
FAX: 803-734-8795

ADVISORY OPINION 2017 - 3

The House Legislative Ethics Committee (HEC) received a request from a Member/Lawyer for an advisory opinion related to representing clients before a state agency and the ramifications of voting on a budget request related to that state agency. The Member explained that his firm may represent clients for workers' compensation claims, condemnation claims with the S.C. Department of Transportation, as well as matters with the Office of Motor Vehicle Hearings.

Pursuant to House Rule 4.16C.(4), the Committee renders the following advisory opinion.

DISCUSSION

S.C. Code Ann. § 8-13-740, part of the Rules of Conduct, provides:

(A) . . . (2) A member of the General Assembly, an individual with whom he is associated, or a business with which he is associated may not knowingly represent another person before a governmental entity, except:
(a) as required by law;
(b) before a court under the unified judicial system; or
(c) in a contested case, as defined in Section 1-23-310, excluding a contested case for a rate or price fixing matter before the South Carolina Public Service Commission or South Carolina Department of Insurance, or in an agency's consideration of the drafting and promulgation of regulations under Chapter 23 of Title 1 in a public hearing. . . .
(7) The restrictions set forth in items (1) through (6) of this subsection do not apply to:
(a) purely ministerial matters which do not require discretion on the part of the governmental entity before which the public official, public member, or public employee is appearing;
(b) representation by a public official, public member, or public employee in the course of the public official's, public member's, or public employee's official duties;

(c) representation by the public official, public member, or public employee in matters relating to the public official's, public member's or public employee's personal affairs or the personal affairs of the public official's, public member's, or public employee's immediate family. . . .

(B) A member of the General Assembly, when he, an individual with whom he is associated, or a business with which he is associated represents a client for compensation as permitted by subsection (A)(2)(c), must file within his annual statement of economic interests a listing of fees earned, services rendered, names of persons represented, and the nature of contacts made with the governmental entities.

(C) A member of the General Assembly may not vote on the section of that year's general appropriation bill relating to a particular agency or commission if the member, an individual with whom he is associated, or a business with which he is associated has represented any client before that agency or commission as permitted by subsection (A)(2)(c) within one year prior to such vote. This subsection does not prohibit a member from voting on other sections of the general appropriation bill or from voting on the general appropriation bill as a whole.

(emphasis added). S.C. Code Ann. § 8-13-740; see also House Ethics Committee Advisory Opinion 93-23. Thus, the Member may not represent another person before a governmental entity unless certain exceptions are complied with. Furthermore, if those exceptions are met, then the Member cannot vote on the section of the budget related to a particular agency if the Member or the business with which he is associated, that is, the law firm, has represented that client before that agency within one year prior to the vote. Additionally, the Member must report any legal fees earned, names of the persons represented, and the nature of contact with the governmental entities on his or her Statement of Economic Interests.

In this situation, the Member must comply with the general rules found in Section 8-13-740(A)(2) in order to represent a person before a governmental agency. This means that the Member may represents persons in contested cases pursuant to the Administrative Procedures Act except before the S.C. Public Service Commission or the S.C. Department of Insurance. Then, pursuant to Section 8-13-740(B), the Member must report on his or her annual Statement of Economic Interests a listing of fees earned, services rendered, names of persons represented, and the nature of contacts with the governmental agency. Finally, as required by Section 8-13-740(C), the Member is prohibited from voting on the section of that year's General Appropriation Bill relating to a specific agency or commission if the member or individual or business which whom he or she is associated with represented a person before the agency or commission within one year prior to that vote.

CONCLUSION

In summary, the Member/Lawyer may represent clients in a contested case, as defined in Section 1-23-310, excluding a contested case for a rate or price fixing matter before the S.C. Public Service Commission or S.C. Department of Insurance, or in an agency's consideration of the drafting and promulgation of regulations. The Member must make the required disclosure on his or her annual Statement of Economic Interests. Also, the Member could not vote on the applicable section related that agency in the annual General Appropriations bill.

Adopted March 1, 2017

House Legislative Ethics Committee

P.O. BOX 11867
519 BLATT BUILDING
COLUMBIA, SC 29211
TELEPHONE: 803-734-3114
FAX: 803-734-8795

ADVISORY OPINION 2017 - 4
(Amended October 30, 2017)

The House Legislative Ethics Committee (HEC) received a request from a Member/Lawyer for an advisory opinion related to representing a state agency in a legal matter but the Member/Lawyer's attorney fees and litigation costs are paid for by a third party, a governmental insurance operation. The Member/Lawyer questioned whether he could still vote on a budget request related to that state agency since the agency is not paying his legal fees. For example, the Member explained that he has often been retained by the Insurance Reserve Fund (IRF)[1] and the Joint Underwriting Association (JUA)[2] to defend an agency who is the insured client on a claim. The Member/Lawyer further questioned in the same scenario whether he could still vote in subcommittee, committee, and during the debate on the House calendar for bills related to that state agency.

Pursuant to House Rule 4.16C.(4), the Committee renders the following advisory opinion.

DISCUSSION

S.C. Code Ann. § 8-13-700, part of the Rules of Conduct, provides:

---

[1] "The Insurance Reserve Fund functions as a governmental insurance operation with the mission to provide insurance specifically designed to meet the needs of governmental entities at the lowest possible cost." http://www.irf.sc.gov/

[2] "The mission of the JUA is to provide a stable market for superior, dependable and defense focused medical professional liability insurance to South Carolina's medical professionals." http://www.scjua.com/about/missionvisionvalues/

(A) No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a family member, an individual with whom he is associated, or a business with which he is associated. This prohibition does not extend to the incidental use of public materials, personnel, or equipment, subject to or available for a public official's, public member's, or public employee's use that does not result in additional public expense.
(B) No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a family member, an individual with whom he is associated, or a business with which he is associated has an economic interest. A public official, public member, or public employee who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a family member, an individual with whom he is associated, or a business with which he is associated shall:
(1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;
(2) if the public official is a member of the General Assembly, he shall deliver a copy of the statement to the presiding officer of the appropriate house. The presiding officer shall have the statement printed in the appropriate journal and require that the member of the General Assembly be excused from votes, deliberations, and other action on the matter on which a potential conflict exists;
. . .

S.C. Code Ann. § 8-13-700(A)-(B). (emphasis added). The Ethics Act defines "economic interest" as follows:

(a) "Economic interest" means an interest distinct from that of the general public in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a public official, public member, or public employee may gain an economic benefit of fifty dollars or more.
(b) This definition does not prohibit a public official, public member, or public employee from participating in, voting on, or influencing or attempting to influence an official decision if the only economic interest or reasonably foreseeable benefit that may accrue to the public official, public member, or public employee is incidental to the public official's, public member's, or public employee's position or which accrues to the public official, public member, or public employee as a member of a profession, occupation, or large class to no greater extent than the economic interest or potential benefit could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class.

S.C. Code Ann. § 8-13-100(11). (emphasis added).

In the instant situation, when the Member is retained by either the IRF or JUA, the Member agrees to an established schedule for payment of his or her legal fees and costs. This set schedule is the same payment schedule as for any other attorney retained by the IRF or JUA to represent a client on a legal matter. Thus, the Member's retention by the IRF or the JUA to defend an agency

on a claim is not distinct from that of the general legal community (i.e., relevant "public") and would meet the large class exemption pursuant to the definition of "economic interest." The Member would not be required to abstain from voting on the section of that year's General Appropriation Bill relating to the IRF or the JUA. Also, the Member is not required to abstain from voting on budgetary funding for the agency the Member represents as the Member is being paid for his representation by the agency's insurer.

It is the Committee's understanding that on a rare occasion the agency may also pay the Member directly for the legal services the Member is providing. On that rare occasion, the Member should then abstain from voting on funding for that agency.

The Committee notes that the Member should list on his or her Statement of Economic Interests under Income and Benefits the income earned from representing an agency for which the fees and costs are paid by the JUA or the IRF for representing an agency client. See S.C. Code Ann. § 8-13-1120(A)(2).

In addition, the Member is not required to abstain from voting during committee and subcommittee meetings as well as during the debate on the House calendar for bills related to a state agency he represents as the Member is being paid for his representation by the agency's insurer. The Committee finds that this practice does not constitute a conflict of interest pursuant to the Rules of Conduct which would require the Member to abstain from voting on legislation directly impacting the agency.

CONCLUSION

In summary, the Member is not required to abstain from voting on budgetary funding for or bills relating to the Member's agency client for whom the Member is retained to represent when such representation is paid for only by the governmental insurance operation. Furthermore, the Member is not required to abstain from voting on budgetary funding for the governmental insurance operation as this would meet the requirements for the large class exemption as defined in "economic interests." The Member is not required to abstain from voting during subcommittee, committee meetings, and during the debate on the House calendar for bills related to the Member's agency client.

Originally Adopted March 1, 2017.
Amended October 30, 2017.

House Legislative Ethics Committee

P.O. BOX 11867
519 BLATT BUILDING
COLUMBIA, SC 29211
TELEPHONE: 803-734-3114
FAX: 803-734-8795

ADVISORY OPINION 2017 - 5
Member working for County Treasurer

The House Legislative Ethics Committee (HEC) received a request from a Member for an advisory opinion. The Member questioned whether it was a conflict of interest for the Member to be employed by the County Treasurer. The Member noted that her husband currently serves as a County Councilman. The Member explained that the Treasurer is elected by the county voters. The Member reported that the County allocates a lump sum for the Treasurer's budget and then the Treasurer decides how much of the budget is allocated to the Treasurer employees' salaries. The Member explained that she currently abstains from voting on the General Appropriations budget on the line item for local governments.

Pursuant to House Rule 4.16C.(4), the Committee renders the following advisory opinion.

DISCUSSION

S.C. Code Ann. § 8-13-700, part of the Rules of Conduct, provides:

A) No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a family member, an individual with whom he is associated, or a business with which he is associated. This prohibition does not extend to the incidental use of public materials, personnel, or equipment, subject to or available for a public official's, public member's, or public employee's use that does not result in additional public expense.
(B) No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a family member, an individual with whom he is associated, or a business with which he is associated has an economic interest. A public official, public member, or public employee who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic

interest of himself, a family member, an individual with whom he is associated, or a business with which he is associated shall:
(1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;
(2) if the public official is a member of the General Assembly, he shall deliver a copy of the statement to the presiding officer of the appropriate house. The presiding officer shall have the statement printed in the appropriate journal and require that the member of the General Assembly be excused from votes, deliberations, and other action on the matter on which a potential conflict exists;
. . .

S.C. Code Ann. § 8-13-700. (emphasis added). Pursuant to Section 8-13-100(11), "Economic Interest" is defined as:

(a) an interest distinct from that of the general public in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a public official, public member, or public employee may gain an economic benefit of fifty dollars or more.
(b) This definition does not prohibit a public official, public member, or public employee from participating in, voting on, or influencing or attempting to influence an official decision if the only economic interest or reasonably foreseeable benefit that may accrue to the public official, public member, or public employee is incidental to the public official's, public member's, or public employee's position or which accrues to the public official, public member, or public employee as a member of a profession, occupation, or large class to no greater extent than the economic interest or potential benefit could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class.

Section 8-13-100(11)(a)-(b).

House Ethics Advisory Opinion 92-4 also provides some guidance although it relates to employment with a state agency rather than with local government. Specifically, it stated:

Question: Is a member of the House of Representatives prohibited from seeking and obtaining employment with a state agency?

There are several sections of the new Ethics Act which are pertinent to the Issue, but none prohibit such employment. Most notably, Section 8-13-1 120(A)(2) requires disclosure of the employment arrangement and the amount of income received. Section 8-13-745(C) It is also applicable. That provision prohibits a public official from voting on that part of the appropriations bill which relates to the agency, department, etc. with which the official has a contractual arrangement for goods or services. Any conflicts of interest which may arise because of the public employment must be handled as outlined in §8-13-700(8), which may include abstention from certain votes.

House Ethics Advisory Opinion 92-4. Thus, the Member may be required to abstain from voting on a line item in the General Appropriations bill for local government if the Member is unable to ascertain the use of the General Appropriations funding for local government.

Also, the Member would need to disclose the income earned from the County Treasurer's office on the Statement of Economic Interests form.

CONCLUSION

In summary, the Member may accept employment with the County Treasurer's office as long as the Member complies with the Rules of Conduct. It would be good practice but it is not required for the Member to abstain from voting on a line item in the General Appropriations bill for local government. The Member must also report this local governmental income earned from the Treasurer's office on the Member's Statement of Economic Interests.

Adopted April 6, 2017

House Legislative Ethics Committee

P.O. BOX 11867
519 BLATT BUILDING
COLUMBIA, SC 29211
TELEPHONE: 803-734-3114
FAX: 803-734-8795

ADVISORY OPINION 2017 - 6

The House Legislative Ethics Committee (HEC) received a request from a Member for an advisory opinion. The Member questioned how the County Legislative Delegation members should report the receipt of parking privileges at a county parking garage and also at the local airport. The Member explained that each delegation member is provided access by the county to parking in a county parking garage. The Member may also request access to a parking card to use in the county garage. As for the parking spaces at the local airport, the county aviation authority gives the delegation member a specific reserved parking location. The Member questions whether he or she can continue to state under "gifts" on the Statement of Economic Interests (SEI), "call [Name of Delegation], [Delegation phone number], for list of benefits, $1.00." In the alternative, the Member questions whether he or she must be more specific and disclose the daily value of the parking spaces under "gifts" on the SEI.

Pursuant to House Rule 4.16C.(4), the Committee renders the following advisory opinion.

DISCUSSION

S.C. Code Ann. § 8-13-1120 provides:

(A) A statement of economic interests filed pursuant to Section 8-13-1110 must be on forms prescribed by the State Ethics Commission and must contain full and complete information concerning:

. . .

(9) the source and a brief description of any gifts, including transportation, lodging, food, or entertainment received during the preceding calendar year from:

(a) a person, if there is reason to believe the donor would not give the gift, gratuity, or favor but for the official's or employee's office or position; or
(b) a person, or from an officer or director of a person, if the public official or public employee has reason to believe the person:

(i) has or is seeking to obtain contractual or other business or financial relationship with the official's or employee's agency; or
(ii) conducts operations or activities which are regulated by the official's or employee's agency if the value of the gift is twenty-five dollars or more in a day or if the value totals, in the aggregate, two hundred dollars or more in a calendar year.

S.C. Code Ann. § 8-13-1120(A)(9) (emphasis added). Thus, a gift of parking privileges at a county garage and county airport would need to be reported by the Member on his or her SEI form as the Member would not receive this gift but for the position he or she holds.

The User Guide for the SEI provides instructions regarding completion of the section on "gifts." Specifically, the filer must provide the nature of the gift, the dollar value, the donor, and the relationship to donor. See page 39 at: http://ethics.sc.gov/Campaigns/Documents/SEI%20Only%20Statement%20of%20Economic%20Interest%20User%20Guide%20%20Updated%201216.pdf.

Thirty days prior to the due date for the SEI on March 30th each year, the House Ethics Committee provides instructions to filers - that is, candidates, former candidates, House Members, and former House Members -- regarding how to complete the SEI. The memo gives examples of how to report legislative events on the SEI under "gifts." For delegation events, the memo states the following: "Donor- For List of Functions; Relationship - Call Delegation office; Nature of Gift - Delegation Phone Number; and Value - $1.00." It is the Committee's understanding that it has been the practice for the delegation staff to maintain a list of events attended by the delegation members, which also included any gifts, such as, parking privileges that the delegation members received.

Thus, the Committee finds that the Delegation Member may continue to list under gifts on his or her SEI: "Donor- For List of Functions; Relationship - Call Delegation office; Nature of Gift - Delegation Phone Number; and Value - $1.00," as long as the Delegation Office maintained a list of the gifts which included the parking privileges, as well as the donor who provided the parking privileges and the dollar value of those privileges. The Member is only required to report each gift that exceeds $25.00 or more.

CONCLUSION

In summary, the Member may continue to list under gifts on his or her SEI "see Delegation office for a list" with the list noting the parking privileges received by the Delegation Members which includes the value, donor, and description of those privileges.

Adopted June 6, 2017.

House Legislative Ethics Committee

P.O. BOX 11867
519 BLATT BUILDING
COLUMBIA, SC 29211
TELEPHONE: 803-734-3114
FAX: 803-734-8795

ADVISORY OPINION 2017 - 7

The House Legislative Ethics Committee (HEC) received a request from a Member for an advisory opinion. The Member questioned whether S.C. Code Ann. § 8-13-1348(B) allows "the use of campaign funds to pay for or reimburse a member for the cost of transportation, lodging and meals expended on the member and the member spouse for attendance at the following international, national, regional, state or local events: legislative conferences, political party conferences, political party conventions, trade conferences, issue conferences or speaking engagements."

Pursuant to House Rule 4.16C.(4), the Committee renders the following advisory opinion.

DISCUSSION

S.C. Code Ann. § 8-13-1348(A)-(B) provides:

> (A) No candidate, committee, public official, or political party may use campaign funds to defray personal expenses which are unrelated to the campaign or the office if the candidate is an officeholder nor may these funds be converted to personal use. The prohibition of this subsection does not extend to the incidental personal use of campaign materials or equipment nor to an expenditure used to defray any ordinary expenses incurred in connection with an individual's duties as a holder of elective office.
> (B) The payment of reasonable and necessary travel expenses or for food or beverages consumed by the candidate or members of his immediate family while at, and in connection with, a political event are permitted.

S.C. Code Ann. § 8-13-1348(A)-(B) (emphasis added).

The only relevant decision interpreting Section 8-13-1348(B) found by the Committee was the Order of Dismissal In the Matter Of: Complaint C2014-033, SC State Ethics Commission vs. The Honorable Richard A. Eckstrom. The Complaint alleged that the Respondent used campaign

funds for personal use in violation of Section 8-13-1348(A). Respondent contended that the "expenses reflected the payment of reasonable and necessary travel expenses, food, and beverages consumed by Respondent while at and in connection with the 2012 Republican National Convention" and that "Section 8-13-1348(B) specifically permits the use of campaign funds to defray these expenses." Order of Dismissal In the Matter Of: Complaint C2014-033, SC State Ethics Commission vs. The Honorable Richard A. Eckstrom, page 1. The State Ethics Commission granted Respondent's Motion to Dismiss finding that Respondent did not convert campaign funds to his own personal use.

Further, the Committee is cognizant that the cardinal rule of statutory construction "is to ascertain and effectuate the intent of the legislature." Fulbright, et al, v. Spinnaker Resorts, Inc., Op. No. 27720 (S.C. Sup. Ct. filed May 17, 2017) (Shearouse Adv. Sh. No. 20 at 30). "If a statute's language is plain, unambiguous, and conveys a clear meaning [,] 'the rules of statutory interpretation are not needed and the court has no right to impose another meaning.'" Fulbright citing Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). (emphasis added).

In the instant scenario, the plain meaning of Section 8-13-1348(B) demonstrates that a Member may pay for the reasonable and necessary travel expenses incurred and food and beverages consumed in connection with the political event attended by the Member and the Member spouse. As there is no definition for "political event" in the Ethics Act, the Committee would need to give the term "political event" its ordinary meaning. The Committee notes that the political events a Member may attend, include but are not limited to, the National Conference of State Legislatures Legislative Summit, a Lobbyist Principal's Annual Meeting (example, S.C. Beer Wholesalers Association), an issue or trade conference (such as, Students First Institute for a Member who serves on the House Education Committee). The Committee finds that for an elected official such events are inherently political in nature and a logical extension of their ability to effectively represent their constituents by virtue of the educational material provided, contacts made, and other information gained. These events therefore fall within the ordinary meaning of the term "political event." Accordingly, the Committee finds that the Member may use his or her campaign funds to pay for or reimburse the Member for the cost of transportation, lodging, and meals expended on the Member and the Member spouse for attendance at the following international, national, regional, state or local events: political party conferences, and political party conventions as well as legislative conferences, trade conferences, issue conferences, or speaking engagements. See also Section 8-13-715 (regarding reimbursements of a Member for a speaking engagement).

CONCLUSION

In summary, the Member may use his or her campaign funds to pay reasonable and necessary expenses for transportation, lodging, and meals for the Member and his or her spouse while at the following international, national, regional, state or local events: political party conferences, political party conventions, legislative, trade, or issues conferences, and speaking engagements. Section 8-13-1348(A) - (B).

Adopted June 6, 2017

House Legislative Ethics Committee

P.O. BOX 11867
519 BLATT BUILDING
COLUMBIA, SC 29211
TELEPHONE: 803-734-3114
FAX: 803-734-8795

ADVISORY OPINION 2017 - 8

The House Legislative Ethics Committee (HEC) received a request from a Member for an advisory opinion. The Member questioned whether the Member could serve on a Section 501(C)(3) board. As background, organizations described in the IRS Code as 501(C)(3) are known as charitable organizations. https://www.irs.gov/charities-non-profits/charitable-organizations/exemption-requirements-section-501-c-3-organizations.

Pursuant to House Rule 4.16C.(4), the Committee renders the following advisory opinion.

DISCUSSION

SEC AO92-150 provides guidance on this question. A County Clerk of Court questioned whether there was any conflict with her service on the Board of Directors for the Shelter of Abused Women. The opinion found "there is no outright prohibition against a public official serving on the Boards of Directors of a publicly held company or corporation or a nonprofit organization." SEC AO92-150, page 1.

However, the State Ethics Commission noted that pursuant to S.C. Code Ann. § 8-13-1120(A)(8), the filer must disclose on her Statement of Economic (SEI) "any compensation received from a business which also has a contract with the governmental entity which the public official serves." SEC AO92-150, page 1. Further, the public official was cautioned that if she must "take action as a public official which will affect the public interests of the Shelter," she must follow the abstention procedures in Section 8-13-700(B). SEC AO92-150, page 2. See also, SEC AO2002-009, page 2 ("When public officials sit on boards of non-profit corporations in their official capacity as public official, the non-profit corporations are not businesses with which they are associated and recusal is not required.").

In the instant scenario, the HEC finds that the Member may serve on the board of a charitable, non-profit organization. The Member must comply with the disclosure requirements for the SEI. This also includes the disclosure of the source and type of any compensation received

from the non-profit for service as a board member. Section 8-13-1120(A)(10). Finally, if the non-profit should receive budgetary funding through a proviso or section in the budget bill, the Member would need to follow the abstention procedures set forth in Section 8-13-700(B) and abstain from voting on that specific section or proviso only if the Member received any compensation outside of ordinary expense reimbursement.

An additional issue to consider is whether a public official who also holds a board position on a charitable, non-profit organization would violate dual-office holding. Article XVII, Section 1A of the South Carolina Constitution prohibits a person from holding "two offices of honor or profit at the same time, but any person holding another office may at the same time be an officer in the militia, member of a lawfully and regularly organized fire department, constable, or a notary public." S.C. Const. art. XVII, § 1A. A person not meeting this exception would violate the dual office holding prohibition by concurrently serving in two offices "involving an exercise of some part of the sovereign power [of the State], either small or great, in the performance of which the public is concerned...." Sanders v. Belue, 78 S.C. 171, 174, 58 S.E. 762, 763 (1907).

As Ops. S.C. Atty. Gen., August 19, 2014 explained:

> Our Supreme Court has recognized that the criteria to be considered in determining whether an individual holds an office for the purpose of dual office holding analysis includes "whether the position was created by the legislature; whether the qualifications for appointment are established; whether the duties, tenure, salary, bond and oath are prescribed or required; whether the one occupying the position is a representative of the sovereign; among others." State v. Crenshaw, 274 S.C. 475, 478, 266 S.E.2d 61, 62 (1980). (1980). However, it has also been determined that "no single criteria is conclusive" and it is not "necessary that all the characteristics of an officer or officers be present." Id. (citing 67 C.J.S. Officers § 8(a) (1978)).

Ops. S.C. Atty. Gen., August 19, 2014. (emphasis added).

The S.C. Attorney General has addressed whether a public official who also holds a board position on a charitable, non-profit organization would violate dual-office holding in several advisory opinions. Specifically, in Ops. S.C. Atty. Gen., June 25, 2010, the Attorney General's Office explained:

> This Office concluded that membership on the board of directors of a private nonprofit eleemosynary corporation would not constitute an office for purposes of dual office holding. Ops. S.C. Atty. Gen., November 27, 2007 (Mauldin Cultural Center Board); September 14, 2005 (Rubicon Counseling Center Board); July 5, 2005 (South Carolina Museum Foundation); April 12, 1993 (Charleston Citywide Local Development Corporation and Community Young Men's Christian Association of Rock Hill, S.C.); January 11, 1991 (Francis Marion Foundation); October 18, 1988 (Children's Trust Fund of South Carolina); September 8, 1987 (Horry County Council on Aging); October 20, 1983 (York County Council on Aging, Inc.).

Ops. S.C. Atty. Gen., June 25, 2010 (WL 2678694). Thus, it would not be dual office holding for a Member to hold a board position on a charitable, non-profit organization.

CONCLUSION

In summary, the Member may serve on the board of a charitable, non-profit organization. The Member must comply with the disclosure requirements for the SEI and abstain from voting on a budgetary item for the non-profit, if applicable. Further, the HEC finds that it is not dual office holding for a Member to serve on the board of a charitable, non-profit organization.

Adopted June 6, 2017.

House Legislative Ethics Committee

P.O. BOX 11867
519 BLATT BUILDING
COLUMBIA, SC 29211
TELEPHONE: 803-734-3114
FAX: 803-734-8795

ADVISORY OPINION 2017 - 9

The House Legislative Ethics Committee (HEC) received a request from a Member for an advisory opinion. The Member questioned whether Members of the House[1] may participate in an October 2017 educational tour of Israel. The Member noted that this upcoming tour is very similar to a prior educational tour of Israel in 2016 that several Members participated in, which included: "visits to strategic security sites, briefings by experts on Israeli - Arab relations and meetings with local Israeli government leaders, Ministers, and Members of the Knesset. A large portion of the tour focused on the impact of the Boycott, Divestment and Sanctions movement on local populations." The Member also explained that the 2016 tour included an economic development aspect as additional capital investment in S.C. with a CEO of an Israeli company was discussed. The Member further explained that "in relation to this offering, however, certain member's travel and touring costs would be paid or reimbursed by the host organization, which is not affiliated with a South Carolina registered lobbyist or registered lobbyist principal."

Specifically, the Member requested a ruling of the House Ethics Committee as to the ethical propriety of: 1) Members participation in such educational tour where all members are invited to participate; 2) Acceptance of educational tour costs paid or reimbursed to certain member-participants by the hosting organization; and 3) Payment of educational tour costs of member-participants from their Officeholder/Campaign Accounts.

Pursuant to House Rule 4.16C.(4), the Committee renders the following advisory opinion.

DISCUSSION

It is the Committee's understanding that Members often use different approaches on how best to represent their districts and the state. One approach Members use is to participate in

[1] The Member questioned whether Members of the S.C. General Assembly may participate in this tour. However, the House Ethics Committee does not have jurisdiction to issue advisory opinions related to the conduct of S.C. Senators. The Senate Ethics Committee solely has that jurisdiction. See S.C. Code Ann. § 8-13-530(8).

educational tours to identify issues or problems that may need legislative action. These tours could be local, national, or international. While there is not specific statutory guidance on this issue, House Ethics Committee Advisory Opinion 93-25, is instructive. The issue was whether the Member could be reimbursed for a trip to a manufacturer of items sold by a non-profit and the Member had introduced legislation related to non-profits that was connected in some way to his or her activities in office. The Committee found it was a permissible reimbursement as "there was some correlation between the legislation that was introduced in the member's official capacity and the trip." House Ethics Committee Advisory Opinion 93-25. Thus, an offer to all Members for an educational tour by a non-lobbyist principal organization and the Member has a legislative interest in the tour offered, would be permissible.

Regarding the second question, that is, the Member's acceptance of educational tour costs paid or reimbursed by the hosting organization, S.C. Code § 8-13-1120(A)(9) provides for the reporting of gifts received by the Member on the Member's Statement of Economic Interests (SEI). Specifically, if the gift by a host organization which is not a lobbyist or lobbyist principal could include touring, meals, hotel, and possibly some airline travel, and this gift would not be provided to the public official but for the official's office or position, then this gift must be reported on the Member's SEI. Section 8-13-100(27) defines a public official as, "an elected or appointed official of the State, a county, a municipality, or a political subdivision thereof, including candidates for the office." (Emphasis added).

Therefore, the Member who participates must report this gift on the 2018 Statement of Economic Interests since the Member will receive this gift based upon his or her office. The Member could report the trip for which the hosting organization paid or provided reimbursement as a "business development/legislative fact-finding trip," under the section, "Gifts." The Member will need to ask the host organization the value of the touring, meals, hotel, and some airline travel in order to report the value.

Lastly, the Member questions whether in the alternative the Member could pay the educational tour expense incurred out of his or her campaign funds. Since the Member is participating in this educational tour for legislative and economic development purposes in order to carry out the duties of the office he or she holds as a House Member, the Committee finds that this would be a permissible use of the Member's campaign funds. See S.C. Code Ann. § 8-13-1348(A). However, any expenditures made for this educational tour paid with the Member's campaign funds would need to be reported on the Member's applicable Campaign Disclosure report.

CONCLUSION

In summary, the Member may participate in an educational tour to Israel with expenditures paid by a non-lobbyist principal host organization. However, this gift would need to be reported on the Member's 2018 SEI. The Member, in the alternative, may use his or her campaign funds to pay for the expenses of this educational tour but the Member would need to report those expenditures on his or her applicable quarterly Campaign Disclosure report.

Adopted June 6, 2017.

House Legislative Ethics Committee

P.O. BOX 11867
519 BLATT BUILDING
COLUMBIA, SC 29211
TELEPHONE: 803-734-3114
FAX: 803-734-8795

ADVISORY OPINION 2017 - 10

The House Legislative Ethics Committee (HEC) received a request from a Member for an advisory opinion. The Member explained that he is currently a Member of the Judicial Merit Selection Commission (Commission) serving as a legislative member. He stated that his spouse plans to file for an open Circuit Court seat and that seat will be screened by the Commission. He questioned whether he must resign from the Commission or at a bare minimum recuse his vote and participation for this particular Circuit court seat.

Pursuant to House Rule 4.16C.(4), the Committee renders the following advisory opinion.

DISCUSSION

As background, the Commission was created to consider the qualifications and fitness of candidates for all judicial positions for the S.C. Supreme Court, Court of Appeals, Circuit Court, Family Court, Master-in-Equity, and Administrative Law Court. S.C. Const. art. IV, § 26; see also, S.C. Code Ann. § 2-19-10 et seq; Segars-Andrews v. Judicial Merit Selection Com'n, 387 S.C. 109, 691 S.E.2d 453 (2010). Five of the ten members of the Commission are appointed in the House by the Speaker; of whom two are public members and three are legislative members. The Speaker Pro Tempore in the Senate appoints the two public members and the Chairman of the Senate Judiciary Committee appoints the three legislative members to serve on the Commission. See Section 2-19-10.

Moreover, there is specific language concerning a legislator running as a judicial candidate but none addressing a Member of the Commission screening his or her spouse as a judicial candidate. Specifically, S.C. Const. art. IV, § 26 provides: "Before a sitting member of the General Assembly may submit an application with the commission for his nomination to a judicial office, and before the commission may accept or consider such an application, the member of the General Assembly must first resign his office and have been out of office for a period established by law." Section 2-19-70(A) details the time period that is required as follows:

No member of the General Assembly may be elected to a judicial office while he is serving in the General Assembly nor shall that person be elected to a judicial office for a period of one year after he either:
(1) ceases to be a member of the General Assembly; or
(2) fails to file for election to the General Assembly in accordance with Section 7-11-15.

S.C. Code Ann. § 2-19-70(A).

Thus, the HEC must review the Ethics Government Accountability and Campaign Reform Act of 1991 (the Ethics Act) for guidance regarding the Member's question. In particular, S.C. Code Ann. § 8-13-700, part of the Rules of Conduct, provides:

A) No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a family member, an individual with whom he is associated, or a business with which he is associated. This prohibition does not extend to the incidental use of public materials, personnel, or equipment, subject to or available for a public official's, public member's, or public employee's use that does not result in additional public expense.
(B) No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a family member, an individual with whom he is associated, or a business with which he is associated has an economic interest. A public official, public member, or public employee who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a family member, an individual with whom he is associated, or a business with which he is associated shall:
(1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;
(2) if the public official is a member of the General Assembly, he shall deliver a copy of the statement to the presiding officer of the appropriate house. The presiding officer shall have the statement printed in the appropriate journal and require that the member of the General Assembly be excused from votes, deliberations, and other action on the matter on which a potential conflict exists;
. . .

S.C. Code Ann. § 8-13-700. (emphasis added). See also, SEC AO20014-001, which discusses conflicts of interest, "Section 8-13-700(B) requires that, in the event of a conflict of interest, a public official must recuse himself from participating in certain governmental actions or decisions. The public official is prohibited from voting, deliberating, or taking any action related to the conflict of interest." (emphasis added).

Further, Section 8-13-100(11), defines "Economic Interest" as:

(a) an interest distinct from that of the general public in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a public

official, public member, or public employee may gain an economic benefit of fifty dollars or more.

(b) This definition does not prohibit a public official, public member, or public employee from participating in, voting on, or influencing or attempting to influence an official decision if the only economic interest or reasonably foreseeable benefit that may accrue to the public official, public member, or public employee is incidental to the public official's, public member's, or public employee's position or which accrues to the public official, public member, or public employee as a member of a profession, occupation, or large class to no greater extent than the economic interest or potential benefit could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class.

Section 8-13-100(11)(a)-(b). Family Member means "an individual who is: (a) the spouse, parent, brother, sister, child, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, or grandchild; (b) a member of the individual's immediate family." S.C. Code Ann. § 8-1-100(15). (emphasis added). In this case, the Member's spouse is considered a family member pursuant to the Ethics Act.

The HEC has reviewed several S.C. Attorney General Opinions which give some guidance on conflict of interests. For example, Ops. S.C. Atty. Gen., September 23, 2011, summarized conflicts of interests pursuant to the Ethics Act as:

> A conflict of interest exists where one office is subordinate to the other, and subject in some degree to the supervisory power of its incumbent, or where the incumbent of one of the offices has the power of appointment as to the other office, or has the power to remove the incumbent of the other or to punish the other.

Ops. S.C. Atty. Gen., September 23, 2011, page 2.[1] (emphasis added). In the instant scenario, the Member would have the power to assist in the appointment of his spouse as one of the three judicial nominees for the Circuit court seat his spouse is seeking.

Accordingly, the HEC finds that since the decision the Member will make will affect the economic interests of his spouse, he should comply with requirements of Section 8-13-700(B) and abstain from screening and voting on judicial candidates for the seat screened which his spouse is a candidate.

CONCLUSION

In summary, the Member may continue to serve on the Commission but must abstain from any participation in screening and voting on the judicial seat his spouse seeks.

Adopted July 26, 2017.

---

[1] In this opinion, the conflict of interest concerned a Director of Nursing at a for-profit institution seeking an appointment on a County Commission for Technical and Community Education. It was questioned whether her appointment would give her access to confidential information that could create a conflict of interest because of her employment with a competing college. The Attorney General found that she may have conflict of interest under Section 8-13-700 as she would be in a position to use her office to influence a decision that may provide an economic interest. The opinion noted "S.C. Code Ann. § 8-13-700 simply warns against being in a position to influence, not actually making decisions to promote financial gain." Ops. S.C. Atty. Gen., September 23, 2011, page 3.

House Legislative Ethics Committee

P.O. BOX 11867
519 BLATT BUILDING
COLUMBIA, SC 29211
TELEPHONE: 803-734-3114
FAX: 803-734-8795

ADVISORY OPINION 2017 - 11

The House Legislative Ethics Committee (HEC) received a request from several Members for an advisory opinion. The Members questioned whether they can use campaign funds to make a contribution to the Korean War Veterans Association, Inc. (KWVA) for construction of the Wall of Remembrance (Wall) at the Korean War Memorial in Washington, D.C. Specifically, each Member's contribution will be used to sponsor a name of a Korean War veteran killed or missing in action from the Member's S.C. county on the Wall at a cost of $750.00 per name. The Members explained that Congress enacted H.R. 1475 in 2016 to permit the Wall but no federal funds could be used to construct the Wall. The Members noted the Wall will feature the names of 37,000 Korean veterans killed or missing in action; 548 of those killed or missing in action were from S.C. The Members stated that they would not make a contribution but for the office each Member holds.

Pursuant to House Rule 4.16C.(4), the Committee renders the following advisory opinion.

DISCUSSION

S.C. Code Ann. § 8-13-1348(A) provides:

> (A) No candidate, committee, public official, or political party may use campaign funds to defray personal expenses which are unrelated to the campaign or the office if the candidate is an officeholder nor may these funds be converted to personal use. The prohibition of this subsection does not extend to the incidental personal use of campaign materials or equipment nor to an expenditure used to defray any ordinary expenses incurred in connection with an individual's duties as a holder of elective office.

S.C. Code Ann. § 8-13-1348(A) (emphasis added).

Pursuant to House Ethics Committee Advisory Opinion 98-3, Members were able to use campaign funds as a contribution to the Strom Thurmond Monument Committee because the Committee was characterized as a "political or partisan organization." The opinion explained that "contributions to political or partisan groups are ordinary office-related expenses permitted by § 8-13-1348 of the Ethics Act." House Ethics Committee Advisory Opinion 98-3, p. 1. The Opinion defined an organization that is "political or partisan" as one whose "primary purpose is political or partisan, rather than community-service oriented," citing House Ethics Committee Advisory Opinion 92-3.

The Senate Ethics Committee addressed a similar issue in Opinion 1997-2 in which the Committee determined that Senators could use campaign funds for "donations to monument commissions created for the purpose of placing a monument on the Capital Complex." The Opinion questioned whether the expense was "ordinary" for a holder of public office and whether the expense was incurred in connection with the Member's duties as an office holder. The Senate Ethics Committee noted:

> Section 8-13-70 expressly authorizes an expenditure of campaign funds for charitable and other purposes upon final disbursement. One could reason that the presence of such specific language in [that section] and its omission from Section 8-13-1348 means that a contribution to a charitable organization prior to final disbursement is not appropriate. This reasoning, however, ignores the fact that Section 8-13-1370 expressly restricts disbursement to several specified items, while Section 8-13-1348 is devoid of such restrictions. Logic dictates that those acts that are not prohibited should be considered appropriate."

Senate Ethics Committee Opinion 1997-2, page 2. The opinion concluded that the donations sought by a charitable organization from Senators to design and erect monuments that the General Assembly had approved was a clear example of donations being sought because of the position held. It also noted that, participation in "charitable giving and charitable good works is a longstanding function of elected officials." Senate Ethics Committee Opinion 1997-2, page 2.

Recently, the House Ethics Committee adopted House Ethics Committee Advisory Opinion 2016-2, known as the Laundry List opinion. The Committee found that contributions to charitable organizations, including churches and schools, was a permissible campaign expenditure as it was the type of expense incurred in relation to the office held. However, the Committee noted that "the candidate or Member may not contribute campaign funds to any charitable organization or church which the candidate, the Member, their immediate family, or the business with which they are associated, derive a personal and financial benefit." House Ethics Committee Advisory Opinion 2016-2, Section II, Subsection 2, pages 5-6.

In the instant case, the website for KWVA indicated that it was an organization that organizes, promotes and maintains for benevolent and charitable purposes an association of persons who have seen honorable service during the Korean War. http://www.kwva.org/brief_history.htm. (emphasis added). Further, in June 30, 2008, Public Law 110-254 was enacted to provide that KWVA was a nonprofit organization that met "the requirements for a veterans service organization under section 501(c)(19) of the Internal Revenue

Code of 1986." 36 U.S. Code § 120101(a). "The Internal Revenue Code section 501(c) includes two subsections [501(c)(19) and 501(c)(23)] which provide for tax-exemption under section 501(a) for organizations that benefit veterans of the United States Armed Forces." *See* https://www.irs.gov/charities-non-profits/other-non-profits/veterans-organizations. Thus, the Committee finds in order to be in accord with the Senate Ethics Opinion 1997-2 and the House Ethics Committee Advisory Opinion, 2016-2, Section II, Subsection 2, that donations may be made to charitable organizations using campaign funds to support the creation and erection of monuments. Therefore, because the KWVA is a non-profit, charitable organization, Members may use their campaign funds to make a donation to the KWVA to assist with the construction of the Wall as long as the Members, their immediate family, or the business with which they are associated do not derive a personal and financial benefit from making that contribution.

CONCLUSION

In summary, the Member may use his or her campaign funds to make a donation to the KWVA, a charitable organization, for the construction of the Wall. However, the Member may not make a donation to a charitable organization in which the Member, his or her immediate family, or the business with which they are associated, derives a personal and financial benefit.

Adopted July 26, 2017.

House Legislative Ethics Committee

P.O. BOX 11867
519 BLATT BUILDING
COLUMBIA, SC 29211
TELEPHONE: 803-734-3114
FAX: 803-734-8795

ADVISORY OPINION 2017 - 12

The House Legislative Ethics Committee (HEC) received a request from a Member for an advisory opinion. The Member questioned the meaning of "material asset" as it pertains to a campaign disclosure report. The Member also questioned what type of expenditures made with campaign funds were considered assets of the campaign. On the recently revised quarterly Campaign Disclosure (CD) report, a Member must report for each expenditure listed whether it is an asset or not. Whether an asset is a "material asset" is also pertinent when the Final CD report is filed.

Pursuant to House Rule 4.16C.(4), the Committee renders the following advisory opinion.

DISCUSSION

S.C. Code Ann. § 8-13-1368(D) provides that:

> A final report may be filed at the time or before a scheduled filing is due. The form must be marked "final" and include a list of the material assets worth one hundred dollars or more and state their disposition.

S.C. Code Ann. § 8-13-1368(D) (emphasis added).

As stated above, candidates and Members must include a list of "material assets" worth one hundred dollars or more and state their disposition when filing their Final CD report. Until recently, Ethics staff was unable to track on a CD report whether an asset was "material" and whether it was accounted for when a Final CD report was filed.

As background, requested changes were recently made by SC Interactive to the CD report template after approval and a lengthy testing process by the counsel and staff for the State Ethics Commission, Senate Ethics Committee, and House Ethics Committee. One of the changes made included requiring a candidate or Member to note for each expenditure reported whether it was an

"asset." The purpose for denoting the assets was to have an accounting of the disposition of "material assets" when the final CD report was filed. An additional tab, "Disposition of Assets," was added to the CD report for this reason.

However, there is no clear definition of the terms "asset" and "material asset" in the Ethics Act. The term "material asset" is further referenced in S.C. Code Ann. § 8-13-1300(30) in the definition for "transfer."[1] It is also used in § 8-13-1340(B(2))[2] relating to proceeds of surplus funds upon final distribution. In general, an asset is defined as "anything with monetary value attached." See https://definitions.uslegal.com/a/asset/.

A recent State Ethics Commission Opinion, 2016-001 provides guidance on this issue. Specifically, the State Ethics Commission distinguished a gift of football tickets to a public official from "a gift of long-term value provided to an office, such as a painting, a plaque, or a piece of furniture that could remain as an asset of the office long after the officeholder is gone" (emphasis added). The opinion explained that because of the nature of the use of football tickets, they had "no tangible lasting value" to the office once the game was over. Therefore, an asset to the office held would likely have a tangible lasting value.

Additionally, a review of ethics statutes in other jurisdictions is instructive. The Arkansas Ethics Commission also requires that "campaign assets" be disclosed and disposed of according to statute after a campaign has ended. Ark. Code R. § 153.00.2-224 explained that certain campaign items did not need to be disposed of such as "campaign signs, campaign literature, and other printed campaign materials that were purchased by the campaign." *See* Ark. Code R. § 153.00.2-224. These items would not, therefore, be considered "assets" of the campaign or office.

In the instant case, the Committee finds that the following items, if purchased with campaign funds, must be disclosed on the Campaign Disclosure report as "assets," including but not limited to, office furniture for the office held or campaign office, and electronic items such as printers, copiers, cell phones, iPads, laptops, and electronic signs. *See* House Ethics Committee Advisory Opinion, 2016-2, Section II, Subsection 5. Further, in House Ethics Committee Advisory Opinion, 2016-2, Section II, Subsection 7, the Committee found that if the Member purchased clothing using campaign funds to wear during the legislative session and for campaigning, then the clothing purchased would be considered an "asset" of the campaign and must be disclosed as such. If these assets are each valued at $100.00 or more, then the Committee finds that they are

---

1 Section 8-13-1300(3) provides: "Transfer" means the movement or exchange of funds or anything of value between committees and candidates except the disposition of surplus funds or material assets by a candidate to a party committee, as provided in this article." (emphasis added).

2 Section 8-13-1340(A)-(B) provides, "(A) Except as provided in subsections (B) and (E), a candidate or public official shall not make a contribution to another candidate or make an independent expenditure on behalf of another candidate or public official from the candidate's or public official's campaign account or through a committee, except legislative caucus committees, directly or indirectly established, financed, maintained, or controlled by the candidate or public official.

(B) This section does not prohibit a candidate from:

(1) making a contribution from the candidate's own personal funds on behalf of the candidate's candidacy or to another candidate for a different office; or

(2) providing the candidate's surplus funds or material assets upon final disbursement to a legislative caucus committee or party committee in accordance with the procedures for the final disbursement of a candidate under Section 8-13-1370 of this article."

"material assets" to be disposed of when the candidate or Member files his or her Final CD report. The Committee additionally finds that if the expenditure is for an item that has "no tangible lasting value," such as, bumper stickers, shirts with the candidate or Member's name, or office or campaign supplies, then those items do not need to be designated as "assets."

CONCLUSION

In summary, the candidate or Member must disclose expenditures using campaign funds of furniture for the Member's office held or campaign office, electronic items, and clothing worn for the office held or for campaigning, as "assets" on his or her CD report. However, expenditures made with campaign funds that have no "tangible lasting value" are not considered "assets." All "material assets" valued at $100.00 or more when initially designated on the CD report must be accounted for at the existing current fair market value on the Final CD report under the "Disposition of Assets" tab. If the Member chooses to repurchase the material asset, the Member could repurchase the material asset at the existing current fair market value at the time of filing the Final CD report.

Adopted July 26, 2017.

House Legislative Ethics Committee

P.O. BOX 11867
519 BLATT BUILDING
COLUMBIA, SC 29211
TELEPHONE: 803-734-3114
FAX: 803-734-8795

ADVISORY OPINION 2017 - 13

The House Legislative Ethics Committee (HEC) received a request from a Member for an advisory opinion. The Member questioned whether a legislative special interest caucus (LSIC) is considered a "legislative caucus" for purposes of the exemption which allows a lobbyist's principal to provide lodging, transportation, entertainment, food, meals, beverages, or an invitation to a function to groups, such as a LSIC pursuant to S.C. Code Ann. § 2-17-90(A)(1). The Member further questioned whether a church or a 501(c)(3) organization could invite the LSIC for a meal in their Fellowship hall.

Pursuant to House Rule 4.16C.(4), the Committee renders the following advisory opinion.

DISCUSSION

S.C. Code Ann. § 2-17-90(A)(1) provides:

> (A) Except as otherwise provided under Section 2-17-100, no lobbyist's principal may offer, solicit, facilitate, or provide to a public official or public employee, and no public official or public employee may accept lodging, transportation, entertainment, food, meals, beverages, or an invitation to a function paid for by a lobbyist's principal, except for:
>
> (1) as to members of the General Assembly, a function to which a member of the General Assembly is invited if the entire membership of the House, the Senate, or the General Assembly is invited, or one of the committees, subcommittees, joint committees, legislative caucuses, or their committees or subcommittees, or county legislative delegations of the General Assembly of which the legislator is a member is invited.

S.C. Code Ann. § 2-17-90(A)(1) (emphasis added). Further, S.C. Code Ann. § 2-17-10(11)(a)-(c), defines a "legislative caucus" as:

(a) a committee of either house of the General Assembly controlled by the caucus of a political party or a caucus based upon racial or ethnic affinity, or gender;
(b) a party or group of either house of the General Assembly based upon racial or ethnic affinity, or gender. However, each house may establish only one committee for racial, ethnic, or gender-based affinity.
(c) "legislative caucus" does not include a legislative special interest caucus as defined in Section 2-17-10(21).

S.C. Code Ann. § 2-17-10(11)(a)-(c). (emphasis added). Thus, a LSIC is not included in the groups denoted pursuant to Section 2-17-90(A)(1) who are permitted to receive invitations from a lobbyist principal. Accordingly, the LSIC must not accept an invitation from a lobbyist principal.

Moreover, the requirements for a LSIC are outlined in S.C. Code Ann. § 2-17-10(21) as follows:

'Legislative special interest caucus' means two or more legislators who seek to be affiliated based upon a special interest. Under no circumstances may a legislative special interest caucus engage in any activity that would influence the outcome of an election or ballot measure. Each legislative special interest caucus must register with the Clerk's Office of the Senate or the House of Representatives in a manner mandated by the Clerk's Office. However, each legislative special interest caucus must provide, and the Clerk's Office must maintain a record of:
(a) the name and purpose of the caucus;
(b) the names of all caucus members; and
(c) the date of creation, and dissolution, if applicable.
The Clerk's Office must maintain these records for at least four years following the dissolution of the caucus. A legislative special interest caucus may include, but is not limited to, a representation of sportsmen and women desiring to enhance and protect hunting, fishing, and shooting sports.

S.C. Code Ann. § 2-17-10(21) (emphasis added). Recently, the HEC verified with the House Clerk's office that there are several registered LSICs, including but not limited to, The S.C. Sportsman's Caucus[1] and The Family Caucus. While the statute provides registration requirements for a LSIC, there is not any language in the statute which provides the House Clerk's office with enforcement authority regarding these requirements for a LSIC.

Additional conditions for a LSIC are provided for in Section 8-13-1333(C)(1)-(2):

(C)(1) A legislative special interest must not solicit contributions as defined in Section 8-13-100(9); however, it may solicit funds from the general public for the limited purpose of defraying mailing expenses, including cost of materials and postage, and for members of the legislative special interest caucus to attend regional and national conferences. Legislative special interest caucus members may attend a regional or national conference

[1] In June 2017, The South Carolina Sportsmen's Caucus held a Shooting Classic event. It is the HEC's understanding that the Congressional Sportsmen's Foundation, a Section 501(c)(3) entity, was responsible for payment of the meals and any costs related to the afternoon shoot. No lobbyist principals sponsored the event.

only if the conference is exclusively comprised of legislative special interest caucus counterparts and convenes for the purpose of interacting and exchanging ideas among caucus members and the conference is sponsored by a national organization with which the legislative special interest caucus is affiliated. Attendance at any conference is prohibited if the conference is sponsored by any lobbying group or extends an invitation to persons other than legislators. Under no circumstances may a legislative special interest caucus accept funds from a lobbyist. Each special interest caucus must submit a financial statement to the appropriate supervisory office by January first and July first of each year showing the total amount of funds received and total amount of funds paid out. It must also maintain the following records, for not less than four years, which must be available to the appropriate advisory office for inspection:
(a) the total amount of funds received by the legislative special interest caucus;
(b) the name and address of each person or entity making a donation and the amount and date of receipt of each donation;
(c) all receipted bills, canceled checks, or other proofs of payment for any expenses paid by the legislative special interest caucus.
(2) A legislative special interest caucus may not accept a gift, loan, or anything of value, except for funds permitted in subsection (C)(1) above.

S.C. Code Ann. § 8-13-1333(C)(1)-(2) (emphasis added). Thus, there are detailed requirements regarding how a contribution can be used by a LSIC but no funds, including invitations, may be accepted from a lobbyist or lobbyist principal.

A recent Senate Ethics Advisory Opinion, 2016-1, provides additional guidance on this issue. Specifically, the Senate Ethics Committee found that "these statutes [S.C. Code Ann. §§ 2-17-10(21) and 8-13-1333(C)(1)] specifically and expressly limit the activities of a legislative special interest caucus and its members." The opinion explained:

members of a legislative special interest caucus are permitted to attend a regional or national conference, but only if the following conditions are met:
(1) the conference is exclusively comprised of legislative special interest caucus counterparts;
(2) the members convene for the purpose of interacting and exchanging ideas among caucus members;
(3) the conference is sponsored by a national organization with which the legislative special interest caucus is affiliated;
(4) the conference is not sponsored by any lobbying group; and
(5) invitations to the conference are extended only to legislators.

Senate Ethics Advisory Opinion, 2016-1, page 2. The Senate Ethics Advisory Opinion 2012-1 concluded: "under no circumstances may a legislative special interest caucus accept funds from a lobbyist." (emphasis added).

Again, it is the Committee's understanding that a LSIC is not considered a "legislative caucus" for purposes of qualifying under the exemption for lobbyist gifts for invitations to groups and caucuses under S.C. Code Ann. § 2-17-90(A)(1). Specifically, the clear language of § 2-17-

10(11)(c) provides that a legislative caucus does not include a legislative special interest caucus as defined in § 2-17-10(21).

Finally, the Member questions whether the LSIC may accept an invitation from a Section 501(C)(3) entity[2]. The Committee finds House Ethics Committee Advisory Opinion 92-48 instructive regarding this question. Specifically, House Ethics Committee Advisory Opinion 92-48 stated:

> Question: Can a member accept a gift from an organization that does not retain a lobbyist nor does it belong to an association which employs a lobbyist?
> Answer: There are no restrictions placed on a public official accepting a gift from an organization not involved in lobbying. If the gift is because of the member's elected position, then Section 8-13-710 (B) requires it to be reported, if it is in excess of $25 per day or $200 per year.

House Ethics Committee Advisory Opinion 92-48; see also House Ethics Committee Advisory Opinion No. 92-2. Thus, the Committee finds that a Member of the LSIC may accept an invitation from a Section 501(C)(3) entity which is not a registered lobbyist principal but the Member must report this gift on his or her Statement of Economic Interests if the fair market value of the event is $25.00 or more and if the donor would not have given the gift but for the Member's position. See Section 8-13-710(B).

CONCLUSION

In summary, a Member of a LSIC may not accept an invitation to a function paid for by a lobbyist's principal because a legislative special interest caucus is not considered a legislative caucus and, therefore, is not entitled to the exemption under § 2-17-90. The LSIC may accept an invitation from a Section 501(C)(3) entity that it is not a registered lobbyist principal. However, the Member who belongs to a LSIC would need to report any gift received reasonably valued at $25.00 or more on his or her Statement of Economics Interests if the donor would not have given the gift but for the Member's position.

Adopted August 14, 2017.

[2] Organizations described in the IRS Code as 501(C) (3) are known as charitable organizations. See https://www.irs.gov/charities-non-profits/charitable-organizations/exemption-requirements-section-501-c-3-organizations.

House Legislative Ethics Committee

P.O. BOX 11867
519 BLATT BUILDING
COLUMBIA, SC 29211
TELEPHONE: 803-734-3114
FAX: 803-734-8795

ADVISORY OPINION 2017 - 14

The House Legislative Ethics Committee (HEC) received a request from a Member for an advisory opinion. The Member questioned whether it would be permissible to (a) pay for door prizes out of campaign funds or (b) accept donations for door prizes for political events to increase participation. The Member noted that the door prizes would be accounted for publicly as a campaign expense or an in-kind contribution.

Pursuant to House Rule 4.16C.(4), the Committee renders the following advisory opinion.

DISCUSSION

S.C. Code Ann. § 8-13-1348(A) provides:

> (A) No candidate, committee, public official, or political party may use campaign funds to defray personal expenses which are unrelated to the campaign or the office if the candidate is an officeholder nor may these funds be converted to personal use. The prohibition of this subsection does not extend to the incidental personal use of campaign materials or equipment nor to an expenditure used to defray any ordinary expenses incurred in connection with an individual's duties as a holder of elective office.

S.C. Code Ann. § 8-13-1348(A) (emphasis added).

The House Ethics Committee recently provided guidance as to the permissible and impermissible use of campaign funds in HEC Opinion 2016-2. Specifically, the Committee referenced the following test, as outlined in HEC Opinion 1992-3, to evaluate the permissibility of an expenditure from a Member's campaign funds:

> Funds collected by a candidate for public office is money received by contributors who are attempting to help the candidate get elected. Those funds should, thus, be utilized only for the purposes of facilitating the candidate's campaign and assisting the candidate [with]

> carry[ing] out his or her duties of office if elected. § 8-13-1348 of the Ethics Act...specifies that campaign funds may not be used "to defray personal expenses which are unrelated to the campaign or the office." Those funds may, however, by used "to defray any ordinary expenses incurred in connection with an individual's duties as a holder of elective office." Using that language as a guide, each expenditure should be judged upon whether it is an ordinary office or campaign related expense or instead a personal expense not connected to the ordinary duties of office.

Committee Advisory Opinion 92-3 (emphasis added). Thus, the Member may use his or her campaign funds for ordinary office or campaign-related expenses.

Furthermore, in HEC Opinion 2016-2, the Committee found that "campaign funds used to purchase promotional items to give away to the public with the candidate or Member's name and the office sought or held are related to the campaign and may be paid for with campaign funds." HEC Opinion 2016-2, Section II, Subsection 4, page 6.

The Member requested that he or she be able to pay for door prizes with campaign funds. A door prize is "a prize awarded to the holder of a winning ticket passed out at the entrance to an entertainment or function," https://www.merriam-webster.com/dictionary/door%20prize. The next question to address is whether a door prize is considered a "raffle." Until recently, only the State of S.C. could conduct a lottery. Pursuant to S.C. Const. art. XVII, § 7., "a raffle, if provided for by general law and conducted by a nonprofit organization for charitable, religious, fraternal, educational, or other eleemosynary purposes" is no longer prohibited as of April 5, 2015. *See also* S.C. Code Ann. § 33-57-100. According to the Charitable Raffles in South Carolina, *Frequently Asked Questions*, State of S.C., Office of the Secretary of State, page 3, a door prize is considered a raffle "if there is an entrance fee or required donation in order to be eligible for the door prize drawing." http://www.sos.sc.gov/forms/Charities/FAQRaffles.pdf.

Additionally, a non-profit organization is allowed to conduct raffles as defined in Section 33-57-120(A) if the organization:

> (1) is recognized by the South Carolina Department of Revenue and the United States Internal Revenue Service as exempt from federal and state income taxation...
> (2) is organized and operated for religious, charitable, scientific, literary, or educational purposes...and
> (3) is registered with the Secretary pursuant to requirements of Chapter 56, Title 33, unless it is exempt from or not required to follow registration requirements of Chapter 56, Title 33, or is a governmental unit or educational institution of this State.

S.C. Code Ann. § 33-57-120 (A)(1)-(3) (emphasis added). In the instant case, political campaigns do not appear to qualify as a non-profit organization as defined in that section. Moreover, the Member did not indicate that a person attending the town hall must pay a fee in order to win a door prize, so this does not appear to be a raffle.

Thus, the Committee finds that using campaign funds to purchase door prizes to give away at a town hall event is an ordinary office or campaign-related expense for the Member, and,

therefore, campaign funds may be used for this purpose. However, the Committee finds that a Member may not give away door prizes at a campaign fundraiser. The Committee recognizes that states such as Ohio and Oregon note in their campaign finance handbooks that door prizes may be permitted at a campaign fundraiser as long as the prize is an item of nominal value and the door prizes are not advertised as an inducement to attend the fundraiser. *See* http://sos.oregon.gov/elections/Documents/elec_law_summary.pdf, page 7; https://www.electionsonthe.net/oh/clark/pdfs/Campaign%20Finance%20Handbook%20(Updated%202013).pdf, page 29. The Committee adds, however, that it is impermissible to accept donations for or to give away door prizes at campaign fundraisers so that it does not appear that the Member is engaging in vote-buying or influencing another's vote in any way.

Therefore, since the Committee finds that campaign funds may be used to pay for door prizes to give away at a town hall event, contributions, whether monetary or in-kind, may be accepted for that purpose. Campaign funds used to purchase door prizes for community events must be disclosed under the expenditure section on the Member's quarterly campaign disclosure report. It should be noted, however, that the contributions, including in-kind[1] contributions, accepted for the purpose of purchasing door prizes are subject to the one thousand dollar contribution limit within an election cycle. *See* S.C. Code Ann. § 8-13-1314(a)(1)(b).

CONCLUSION

In summary, the Member may use his or her campaign funds to purchase door prizes for a town hall or community event because a door prize is an ordinary expense incurred in connection with the individual's campaign or duties as a holder of elective office. However, it is impermissible to accept donations for or to give away door prizes at campaign fundraisers. Moreover, the Member is encouraged to provide door prizes that include the Member's name and District number for limited purposes at community events, such as town halls, and to make those prizes available to those in attendance at the event. Use of campaign funds for door prizes must be included under the expenditure section on the Member's quarterly campaign disclosure report.

Adopted August 14, 2017.

[1] Section 8-13-1300(20) provides "In-kind contribution or expenditure means goods or services which are provided to or by a person at no charge or for less than their fair market value."

House Legislative Ethics Committee

P.O. BOX 11867
519 BLATT BUILDING
COLUMBIA, SC 29211
TELEPHONE: 803-734-3114
FAX: 803-734-8795

ADVISORY OPINION 2017 - 15

The House Legislative Ethics Committee (HEC) received a request from a Member for an advisory opinion. The Member questioned whether he or she must report under the section "gifts" on his or her Statement of Economic Interests (SEI) the value of an event the Member attended, which was sponsored by multiple lobbyist's principals. Specifically, the Member attended S.C. Night at the 2017 NCSL Legislative Summit in Boston, MA. The Member received documentation that this event was sponsored by 29 lobbyist's principals with a cost of $4.16 per person per sponsor. Thus, the total value per public official was $120.64. Therefore, the question is whether the Member must report this event as a gift, depending on which value is used, since any gifts received due to the Member's position and valued at $25 or more must be reported on the SEI. Finally, the Member questioned whether he or she could just report this under gifts as "See House Invitations Committee for list."

Pursuant to House Rule 4.16C.(4), the Committee renders the following advisory opinion.

DISCUSSION

S.C. Code Ann. § 2-17-90(B) provides:

(1) No lobbyist's principal or person acting on behalf of a lobbyist's principal may provide to a public official or a public employee the value of lodging, transportation, entertainment, food, meals, or beverages exceeding fifty dollars in a day or four hundred dollars in a calendar year per public official or public employee . . .
(2) The daily dollar limitation in item (1) must be adjusted on January first of each even-numbered year by multiplying the base amount by the cumulative Consumer Price Index and rounding it to the nearest five dollar amount. For purposes of this section, "base amount" is the daily limitation of sixty dollars, and "Consumer Price Index" means the Southeastern Consumer Price Index All Urban Consumers as published by the United States Department of Labor, Bureau of Labor Statistics. . . .

S.C. Code Ann. § 2-17-90(B) (emphasis added). Currently, the daily dollar limitation cannot exceed sixty dollars in a day or four hundred and eighty dollars in a calendar year per public official or public employee.

With respect to reporting gifts on a Member's SEI, S.C. Code Ann. § 8-13-1120(A)(9) provides:

> (A) A statement of economic interests filed pursuant to Section 8-13-1110 must be on forms prescribed by the State Ethics Commission and must contain full and complete information concerning: . . .(9) the source and a brief description of any gifts, including transportation, lodging, food, or entertainment received during the preceding calendar year from:
> (a) a person, if there is reason to believe the donor would not give the gift, gratuity, or favor but for the official's or employee's office or position; or
> (b) a person, or from an officer or director of a person, if the public official or public employee has reason to believe the person:
> (i) has or is seeking to obtain contractual or other business or financial relationship with the official's or employee's agency; or
> (ii) conducts operations or activities which are regulated by the official's or employee's agency if the value of the gift is twenty-five dollars or more in a day or if the value totals, in the aggregate, two hundred dollars or more in a calendar year.

S.C. Code Ann. § 8-13-1120(A)(9) (emphasis added).

According to the statutory language provided above, each lobbyist's principal may not spend more than sixty dollars per day per public official or more than four hundred and eighty dollars per public official in a calendar year to provide that public official with lodging, transportation, entertainment, food, meals or beverages. *Id.* Moreover, it has been common practice that when two or more lobbyist's principals co-sponsor an event, they evenly distribute the total amount expended on the event among the number of lobbyist's principals who sponsor it.

State Ethics Commission Advisory Opinion 99-005 provides additional guidance on this question. In the opinion, the Commission noted that "the intent of [Section 2-17-90(B)] is that no one lobbyist's principal may give food, drink, lodging, transportation, or entertainment that exceeds the daily limit or yearly aggregate." The Commission acknowledged that several lobbyist's principals often co-host one event on the same evening and that a multi-host event meets the intent of that Section. The Commission, therefore, concluded that "more than one lobbyist's principal may co-host a single function and share the expenses of food, drink, lodging, and transportation, so long as the different hosts are clearly identified and the per lobbyist's principal per recipient spending caps and group invitations rules (including attendance out-of-state) are met, subject to the facts and circumstances of each event." State Ethics Commission Advisory Opinion 99-005, p. 3.

In the instant situation, it is permissible for 29 lobbyist's principals to sponsor an event which is offered to all Members as long as the value of the event per lobbyist's principal does not exceed $60.00 per public official. Additionally, it is the Committee's understanding that the

lobbyist's principal must report the amount expended on the event on its Lobbyist's Principal Disclosure Review report filed with the SEC.

Pursuant to § 8-13-1120(A)(9), a Member must report the value each lobbyist's principal spent on that Member to host the event as a gift on his or her SEI, if the value of the event to each lobbyist's principal donor is $25.00 or more. With respect to the matter in question, the Committee finds that the Member is not required to report this event on his or her SEI as it has a value of $4.16 per lobbyist's principal donor, which does not exceed $25.00.

The Committee notes that the S.C. Night at the 2017 NCSL Legislative Summit in Boston, MA occurred after the legislative session ended. Thus, this event would not be an "official invitation" approved through the House Invitations Committee. Therefore, the Member could not rely on this event being included under "See House Invitations for a list of events."

CONCLUSION

In summary, a Member must report an event which was co-sponsored by several lobbyist's principals that the Member attended as a gift on his or her Statement of Economic Interests because the lobbyist's principal would not have sponsored the event for the Member but for the Member's office or position. The Member must report under the "Gifts" section of the SEI, the value of the gift for each lobbyist's principal if each value is at or above the threshold amount set in Section 8-13-1120(A)(9) (currently $25.00).

Adopted October 30, 2017.

House Legislative Ethics Committee

P.O. BOX 11867
519 BLATT BUILDING
COLUMBIA, SC 29211
TELEPHONE: 803-734-3114
FAX: 803-734-8795

ADVISORY OPINION 2017 - 16

The House Legislative Ethics Committee (HEC) received a request from a Member/Lawyer for an advisory opinion questioning whether the Member may give a contribution from his or her campaign funds to the county political party.

Pursuant to House Rule 4.16C.(4), the Committee renders the following advisory opinion.

DISCUSSION

S.C. Code Ann. § 8-13-1348(A) provides:

> No candidate, committee, public official, or political party may use campaign funds to defray personal expenses which are unrelated to the campaign or the office if the candidate is an officeholder nor may these funds be converted to personal use. The prohibition of this section does not extend to the incidental personal use of campaign materials or equipment nor to an expenditure used to defray any ordinary expenses incurred in connection with an individual's duties as a holder of elective office.

Thus, the Member may use his or her campaign funds to pay for expenses related to the office held or for campaigning.

Pursuant to Section 8-13-1300(26), "political party" means "an association, a committee, or an organization which nominates a candidate whose name appears on the election ballot as the candidate of that association, committee, or organization." S.C. Code Ann. § 8-13-1300(26). Further, Section 8-13-1300(21) defines a "legislative caucus committee" as

> (a) a committee of either house of the General Assembly controlled by the caucus of a political party or a caucus based upon racial or ethnic affinity, or gender; however, each house may establish only one committee for each political, racial, ethnic, or gender-based

affinity; (b) a party or group of either house of the General Assembly based upon racial or ethnic affinity, or gender; (c) 'legislative caucus committee' does not include a 'legislative special interest caucus' as defined in Section 2-17-10(21).

S.C. Code Ann. § 8-13-1300(21). There are specific dollar limits a Member or any person may contribute to a committee. Specifically, S.C. Code Ann. § 8-13-1322(A) provides that "[a] person may not contribute to a committee and a committee may not accept from a person contributions aggregating more than three thousand five hundred dollars in a calendar year."

In State Ethics Commission Opinion SEC A092-081, the Commission acknowledged that a caucus would be limited in accepting charitable contributions of $3,500 per person per year if channeled to its campaign account as provided in Section 8-13-1304. However, the opinion also indicated that the restriction in S.C. Code Ann. Section 8-13-1322(A) would not apply "if such contributions are channeled through a separate account utilized strictly for the community education program with no funds contributed to the campaign account or utilized to support candidates." SEC A092-081.

The Senate Ethics Committee uses similar reasoning in its Advisory Opinion 93-2, which allowed Members of the Senate to use their campaign funds to make donations to the South Carolina College Democrats. In that opinion, the Committee indicated that contributions to political organizations are permissible as "contributions or dues paid by a member to a political or partisan group are generally office-related expenses; especially, as in this case, the member is being asked to support the group because she is an officeholder." Senate Ethics Op. 93-2. However, the Committee noted that the contribution must be clearly marked, "to be used only for ordinary administrative or operating expenses," in order to prevent the contributions from being recontributed to other campaigns or candidates in violation of the intent of § 8-13-1340.

The House Ethics Committee reached an analogous conclusion in its Advisory Opinion 92-40 which quoted its 92-3 opinion, stating that, "dues or contributions to some organizations...could be paid from a campaign account, depending on the nature of the group." The Committee reasoned that "[p]olitical and [p]artisan groups are generally regarded as campaign related and dues can thus be paid to them."

The Committee notes that it has been a longstanding practice in both the South Carolina Senate and House of Representatives to allow current Members of the General Assembly to use his or her campaign funds to make a contribution to a political party such as a legislative caucus committee if the donation is paid to the caucus's administrative account, not to its campaign account. This allows for flexibility in the amount donated as there are no contribution limitations when given to an administrative account.

Further, the Committee remarks that while Section 8-13-140 specifically authorizes the candidate or Member's expenditure of campaign funds to a party committee when closing his or her campaign account, Section 8-13-1348 does not delineate a specific list of authorized uses for campaign funds, which can be used for campaigning or the office held. Thus, the Committee refers to the Advisory Opinions for guidance on how the campaign funds may be used. For the reasons discussed above, the House Ethics Committee finds that a Member may also use his or her

campaign funds to make a donation to a county political party as long as the donation is made to the party's administrative account and not to its campaign account. The Committee also reminds the Member that he or she must report this expenditure on his or her applicable campaign disclosure report.

CONCLUSION

In summary, the Member may use his or her campaign funds to make a contribution to a state or local political party or political caucus because contributions to political groups are considered office-related expenses. However, the Member may only donate to the political caucus or party's administrative account, not to its campaign account.

Adopted October 30, 2017.

House Legislative Ethics Committee

P.O. BOX 11867
519 BLATT BUILDING
COLUMBIA, SC 29211
TELEPHONE: 803-734-3114
FAX: 803-734-8795

ADVISORY OPINION 2016-1

The House Legislative Ethics Committee (HEC) received a request for an advisory opinion from a Member on a matter of interest to him regarding his service on the House Legislative Oversight Committee (HLOC). The Member explained that the Executive Subcommittee has initiated a study of the SC Retirement System Investment Commission (Commission) which will begin in earnest in August, and there were allegations that both a committee staffer, and he would have a conflict of interest in continuing to be involved with this particular study. Specifically, the Member stated that HLOC "recently conducted an online public survey during the month of May. Comments were solicited about a group of agencies under study, including the Commission. Over 1,000 comments were received, and two of the anonymous comments give rise to this request for an ethics opinion." Member's May 31, 2016 letter. The Member reported that HLOC will post all comments online including the anonymous comments. The two comments are as follows:

> May 19, 2016 [HLOC staffer] was a lawyer working for Collins and Lacy. Reynolds Williams (a commissioner on the Commission, hired Collins and Lacy). [HLOC staffer] is a Legislative Oversight committee staffer on the subcommittee for the Investment Commission. This is a direct conflict of interest.
>
> May 19, 2016 [Member's] wife has an immediate family member who is a law partner with Reynolds Williams (a commissioner of the Commission). [Member] is on the subcommittee reviewing the Investment Commission. This is a direct conflict of interest.

See Member's May 31, 2016 letter.

The Member submitted an amended letter requesting an advisory opinion on June 8, 2016, explaining that two additional, almost verbatim, anonymous comments were received on May 19th, which referenced the potential conflicts of interest of the HLOC staffer and him with the HLOC Executive Subcommittee's study of the Treasurer's Office. He noted that these two additional

comments will be posted online and that the study of the Treasurer's Office is currently in progress. The two comments are as follows:

> May 19, 2016 [HLOC staffer] was a lawyer working for Collins and Lacy. Reynolds Williams (a commissioner on the Commission, hired Collins and Lacy. [HLOC staffer] is a Legislative Oversight committee staffer on the subcommittee for the State Treasurer's Office. This is a direct conflict of interest.
>
> May 19, 2016 [Member's] wife has an immediate family member who is a law partner with Reynolds Williams (a commissioner of the Commission). [Member] is on the subcommittee reviewing the Investment Commission. This is a direct conflict of interest.

See Member's June 8, 2016 letter.

Pursuant to House Rule 4.16C.(4), the Committee renders the following advisory opinion.

EXECUTIVE SUMMARY

Pursuant to S.C. Code Ann. § 8-13-700, the Committee finds that it is not a conflict of interest for the HLOC staffer (staffer) to serve as a staffer for the HLOC subcommittee's study of the Commission as he has no economic interest in the law firm of Collins & Lacy, P.A. where he was previously employed. This firm represented Commissioner Williams who serves on the Commission. Further, the staffer did not work on any legal matters for Commissioner Williams while employed by the law firm. While the State Treasurer also serves as a Commissioner with Mr. Williams on the Commission, that fact does not create a conflict of interest preventing the staffer's work on the HLOC subcommittee studying the State Treasurer's office. The Committee further finds there is no conflict of interest for the Member to serve on the HLOC's subcommittee studying the Commission as his wife's relatives (an uncle and cousin) are not encompassed within the S.C. Code Ann. § 8-13-100(18) definition of "immediate family," with regard to a conflict of interest. The Committee also finds that it is not a conflict of interest for the Member to work on the HLOC's subcommittee studying the State Treasurer's office even though the State Treasurer serves as a Commissioner with Mr. Williams on the Commission.

DISCUSSION

As background, S.C. Code Ann. § 2-2-20 provides for the establishment of HLOC as follows:

> (A) Beginning January 1, 2015, each standing committee shall conduct oversight studies and investigations on all agencies within the standing committee's subject matter jurisdiction at least once every seven years in accordance with a schedule adopted as provided in this chapter.
> (B) The purpose of these oversight studies and investigations is to determine if agency laws and programs within the subject matter jurisdiction of a standing committee:

(1) are being implemented and carried out in accordance with the intent of the General Assembly; and
(2) should be continued, curtailed, or eliminated.
(C) The oversight studies and investigations must consider:
(1) the application, administration, execution, and effectiveness of laws and programs addressing subjects within the standing committee's subject matter jurisdiction;
(2) the organization and operation of state agencies and entities having responsibilities for the administration and execution of laws and programs addressing subjects within the standing committee's subject matter jurisdiction; and
(3) any conditions or circumstances that may indicate the necessity or desirability of enacting new or additional legislation addressing subjects within the standing committee's subject matter jurisdiction.

S.C. Code Ann. § 2-2-20. Thus, HLOC serves as an investigative committee which issues a report on the agency studied rather than as a policy-making committee which votes on proposed legislation. Any House member may file legislation to implement HLOC's recommendations.
Seehttp://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/HouseLegislativeOversightCommitteeBrochure.pdf.

As part of LHOC's study, the Committee solicits written comments from the public regarding the Agency under review. Those comments are also posted online.

As for the Commission, it has the fiduciary responsibility for all investments in the Retirement Systems. See http://www.rsic.sc.gov/About/default.htm. Mr. Reynolds Williams serves as a Commissioner and was appointed by the Chairman of the Senate Finance Committee. See http://www.rsic.sc.gov/Commission/default.htm.

The SC State Treasurer, Curtis Loftis, Jr., also serves *ex officio* as a Commissioner on the Commission. See http://www.rsic.sc.gov/Commission/CommissionerBIOS/default.htm.

The first allegation of a conflict of interest relates to a staffer on the subcommittee assigned to study the Commission. The anonymous comment appears to contend that because the staffer, in his current position, could take some action regarding the study of the Commission that would affect the economic interest of a business with which he was formerly associated, that it is therefore a conflict for him to serve as a staffer for this matter. As support, it is alleged that prior to joining the HLOC, the staffer was a lawyer working for the law firm of Collins & Lacy, P.C. The allegation further states that Reynolds Williams, a commissioner on the Commission, hired Collins & Lacy, P.C. for legal matters.

The second allegation of a conflict of interest relating to the staffer concerns the same facts as set forth above but alleges a conflict with a different agency. Specifically, it is contended that because of his employment with the law firm who represented Commissioner Reynolds Williams, it is now a conflict for the staffer to serve as a staffer on the HLOC subcommittee for the State Treasurer's office. While no specific conflict of interest is alleged with the State Treasurer's

office, it appears the conflict must be the fact that both Mr. Williams and Mr. Loftis, who also serves as the State Treasurer, serve together as Commissioners on the Commission.

Pursuant to the Rules of Conduct regarding conflicts of interest, S.C. Code Ann. § 8-13-700 provides:

> (A) No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a family member, an individual with whom he is associated, or a business with which he is associated. This prohibition does not extend to the incidental use of public materials, personnel, or equipment, subject to or available for a public official's, public member's, or public employee's use that does not result in additional public expense.
>
> (B) No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a family member, an individual with whom he is associated, or a business with which he is associated has an economic interest. A public official, public member, or public employee who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a family member, an individual with whom he is associated, or a business with which he is associated shall:
>
> (1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;
>
> (2) if the public official is a member of the General Assembly, he shall deliver a copy of the statement to the presiding officer of the appropriate house. The presiding officer shall have the statement printed in the appropriate journal and require that the member of the General Assembly be excused from votes, deliberations, and other action on the matter on which a potential conflict exists;
>
> (3) if he is a public employee, he shall furnish a copy of the statement to his superior, if any, who shall assign the matter to another employee who does not have a potential conflict of interest. If he has no immediate superior, he shall take the action prescribed by the State Ethics Commission.

(Emphasis added). S.C. Code Ann. § 8-13-700. See also, SEC AO2004-001 which provides regarding a conflict of interest, "Section 8-13-700(B) requires that, in the event of a conflict of interest, a public official must recuse himself from participating in certain governmental actions or decisions. The public official is prohibited from voting, deliberating, or taking any action related to the conflict."

The staffer provided documentation to the HEC that he was employed with Collins & Lacy, P.C. as a law clerk from May 2006-September 2006 and as an attorney from August 2007-January 2015. At his request, the law firm ran a recent conflicts check and found that while Mr. Williams was a firm client, the staffer never billed any time to his file. Also, the staffer reported he was never a partner at Collins & Lacy, P.C., so there was no profit sharing or economic interest in Collins & Lacy, P.C.; he just received his salary. Moreover, HLOC is an investigative committee which merely issues a report on an agency. The Committee finds that the staffer is not engaged in "making, or in any way attempt[ing] to use his employment to influence a governmental decision in which he . . . or a [former] business with which he [wa]s associated" nor did he have an economic

interest in the former law firm in which he was associated. Thus, it does not appear that the staffer has a conflict of interest which prohibits him from serving as a staffer on the HLOC's subcommittee studying the Commission.

Moreover, if the Committee found that there was no conflict for the staffer as it related to Mr. Williams, then there is no conflict for the staffer to serve as a staffer for the HLOC subcommittee studying the State Treasurer's office. The Committee is unclear how the State Treasurer's service as a Commissioner with Mr. Williams on the Commission created a conflict of interest for the staffer's work as a staffer for the HLOC's subcommittee review of the State Treasurer's office.

While the HEC does not have jurisdiction over the South Carolina Rules of Professional Conduct governing lawyers, we have reviewed the rules regarding conflicts of interest, that is, Rule 1.10 (general imputation rule)[1] and Rule 1.9 (duties to former clients),[2] Rules of Professional

---

[1] Rule 1.10 provides, "(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless
(1) the prohibition is based on a personal interest of the disqualified lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm; or
(2) the prohibition is based upon Rule 1.9(a) or (b) and arises out of the disqualified lawyer's association with a prior firm, and
(i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom;
(ii) written notice is promptly given to any affected former client to enable the former client to ascertain compliance with the provisions of this Rule, which shall include a description of the screening procedures employed; a statement of the firm's and of the screened lawyer's compliance with these Rules; a statement that review may be available before a tribunal; and an agreement by the firm to respond promptly to any written inquiries or objections by the former client about the screening procedures; and
(iii) certifications of compliance with these Rules and with the screening procedures are provided to the former client by the screened lawyer and by a partner of the firm, at reasonable intervals upon the former client's written request and upon termination of the screening procedures.
(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:
(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and
(2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.
(c) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7.
(d) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11."

[2] Rule 1.9 provides, "(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.
(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client
(1) whose interests are materially adverse to that person; and
(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter; unless the former client gives informed consent, confirmed in writing.
(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:
(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

Conduct, Rule 407, SCACR. In this instance, it does not appear that the staffer worked with Mr. Williams or gained any information through his employment at Collins & Lacy, P.C. that would prohibit him from serving as a staffer on the HLOC's subcomittee studying the Commission.

The third allegation regarding a conflict of interest relates to a Member of the HLOC, who is on the Executive subcommittee reviewing the Commission. It is contended that the Member's wife has an immediate family member who is a law partner with Mr. Williams, a commissioner of the Commission.

S.C. Code Ann. § 8-13-100(18) defines "immediate family" with regards to a conflict of interest pursuant to § 8-13-700, as follows:

> (a) a child residing in a candidate's, public official's, public member's, or public employee's household;
> (b) a spouse of a candidate, public official, public member, or public employee; or
> (c) an individual claimed by the candidate, public official, public member, or public employee or the candidate's, public official's, public member's, or public employee's spouse as a dependent for income tax purposes.

S.C. Code Ann. § 8-13-100(18). See also, SEC AO93-030, where the State Ethics Commission found that the Chairman of a Commission, whose brother was a partner in a law firm, could participate in contested matters before the Commission even though one of the parties was represented by the law firm where his brother was a partner as a "brother" was not included within the definition of "immediate family" pursuant to § 8-13-100(18).

The Member explained that neither he nor his wife have an immediate family member as defined under § 8-13-100(18), who practices law with Mr. Williams. He noted that his wife's uncle and cousin are partners with Mr. Williams in the firm of Wilcox, Buyck & Williams in Florence, SC. The Member's wife's uncle and cousin are not considered "immediate family" as contemplated pursuant to the Ethics, Government Accountability, and Campaign Reform Act of 1991, regarding conflicts of interest.

The fourth allegation regarding a conflict of interest for the Member concerns the same facts as set forth above but alleges a conflict with a different agency. Specifically, it is contended that because his wife has an immediate family member who is a law partner with Mr. Williams, a commissioner of the Commission, it is a conflict for the Member to serve on the HLOC subcommittee for the State Treasurer's office. While no specific conflict of interest is alleged with the State Treasurer's office, it appears the conflict must be the fact that both Mr. Williams and Mr. Loftis, who also serves as the State Treasurer, serve together as Commissioners on the Commission. The Committee finds that this is not a conflict which bars the Member's work on the HLOC's subcommittee reviewing the State Treasurer's office.

CONCLUSION

---

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client."

In summary, it is not a conflict of interest for the staffer to serve as a HLOC staffer on the Executive Subcommittee studying the Commission. When he was employed first as a law clerk and then as an attorney with Collins & Lacy, P.C., he did not work on legal matters for Mr. Williams, a Commissioner on the Commission nor did he have any economic interest in the law firm.

With regard to the Member, his service on the HLOC Executive Subcommittees studying the Commission is not a conflict of interest as his wife's uncle and cousin do not fall within the definition of "immediate family" as defined in § 8-13-100(18) and used in the rules of professional conduct regarding conflicts of interest.

Finally, the fact that both Mr. Williams and Mr. Loftis, who is the State Treasurer, work together as Commissioners on the Commission, does not create a conflict of interest preventing the Member and staffer's work on the HLOC's Executive Subcommittee studying the State Treasurer's office.

Adopted June 15, 2016.

House Legislative Ethics Committee

P.O. BOX 11867
519 BLATT BUILDING
COLUMBIA, SC 29211
TELEPHONE: 803-734-3114
FAX: 803-734-8795

PROPOSED ADVISORY OPINION 2016-2

TO: **Members of the House of Representatives**

FROM: **House of Representatives Legislative Ethics Committee**

RE: **Laundry List Opinion**

DATE: **September 1, 2016**

Due to apparent confusion over application of S.C. Code Ann. § 8-13-1348, which relates to the use of campaign funds by a candidate or Member of the General Assembly, the House of Representatives Legislative Ethics Committee Chairman appointed a subcommittee to respond to Members who requested advisory opinions from the Committee. The Subcommittee met to discuss questions received from Members regarding the permissible and impermissible use of campaign funds. This opinion is not meant to serve as an exhaustive list of what are permissible and impermissible expenditures from the campaign account. The Committee will continue to review Members' specific requests regarding permissible and impermissible expenditures from campaign funds. For the current requests received, the Subcommittee compiled these inquiries into the following list:

Whether it is acceptable to use campaign funds for the following expenditures:

A. Dues for membership in a service-type organization or as a renewing member;
B. Membership at a private club;
C. Dry cleaning;
D. Member's meal with a constituent;

E. Maintenance for a Member's personal vehicle used for campaigning or official business;
F. Fines and penalties received as a result of office;
G. Gifts for Individual Members;
H. Personal or constituent's living expenses;
I. An. Election in a different body;
J. Contributions to charitable organizations, churches, or schools;
K. Sponsorships which include an advertisement and dues;
L. Member's cell phone bill when the cell phone is used for campaigning and House official business as well as for personal use;
M. Expenses for Promotional items, Merchandise, or Advertising that contain the Candidate or Member's Name and Office;
N. Office Equipment Expenses;
O. Dues for membership in an organization or as a new member;
P. Clothing;
Q. Gifts or Flowers for Office Staff, House Staff, or Constituents including Gifts, Resolutions, and Cards for Deaths, Births, or other Special Events sent by the Speaker or Members to other Members;
R. Travel expenses and meals for a person, district group, or team being recognized by the House of Representatives;
S. Resolutions and Flags;
T. Signs that benefit the Community;
U. Food or meals for functions that are directly related to the office;
V. Meals and/or beverages for campaign workers;
W. Meals for Members and Staff by a Committee Chairman, Speaker, and Speaker Pro Tempore;
X. Tickets to a political event;
Y. Legal expenses associated with a candidate or Member's campaign; and
Z. Newspapers and News Services.

Pursuant to House Rule 4.16C.(4), the Committee renders the following advisory opinion as a response for guidance.[1] The Committee notes that this opinion will apply to any campaign expenditures made prospectively from the date of the Committee's approval. Any change in the Committee's prior positions on permissible or impermissible use of campaign funds will not apply retrospectively.

DISCUSSION

S.C. Code Ann. § 8-13-1348(A) provides:

> (A) No candidate, committee, public official, or political party may use campaign funds to defray personal expenses which are unrelated to the campaign or the office if the candidate is an officeholder nor may these funds be converted to personal use. The prohibition of this

[1] The Committee found that Committee Advisory Opinions 95-3 is not accessible in full nor are Committee Advisory Opinions 95-4 through 95-6 accessible. Therefore, the Committee has only considered the relevant portion of Committee Advisory Opinion 95-3 available in drafting this Opinion.

subsection does not extend to the incidental personal use of campaign materials or equipment nor to an expenditure used to defray any ordinary expenses incurred in connection with an individual's duties as a holder of elective office.

S.C. Code Ann. § 8-13-1348(A)(1991 as amended) (emphasis added).

The State Ethics Commission (SEC) recently reiterated that "the terms 'personal' and 'unrelated to the campaign'" with regard to expenditures, are "not defined in the Ethics Act and the Act itself provides no clear guidance on what is and what is not an acceptable expenditure from the campaign funds." See SEC AO2016-004, p. 2 (January 20, 2016).

The Committee also provided instruction as to the permissible and impermissible use of campaign expenditures in Committee Advisory Opinion 2015-3. The Committee found that donating to the Blatt Building's custodial staff and House staff as well as purchasing flowers for staff members and constituents due to certain events were not expenses that would exist irrespective of the Member's duties as an officeholder. Thus, the Committee held that these were permissible expenditures from a Member's campaign funds.

The Committee Advisory Opinion 2015-3 utilized Committee Advisory Opinion 92-3, for guidance. Specifically, Opinion 92-3 gave the following test to evaluate the permissibility of a campaign expenditure:

> Funds collected by a candidate for public office is money received by contributors who are attempting to help the candidate get elected. Those funds should, thus, be utilized only for the purposes of facilitating the candidate's campaign and assisting the candidate carry out his or her duties of office if elected. §8-13-1348 of the Ethics Act, which took effect January 1, 1992, specifies that campaign funds may not be used "to defray personal expenses which are unrelated to the campaign or the office." Those funds may, however, be used "to defray any ordinary expenses incurred in connection with an individual's duties as a holder of elective office." Using that language as a guide, each expenditure should be judged upon whether it is an ordinary office or campaign related expenses or instead a personal expense not connected to the ordinary duties of office.

Committee Advisory Opinion 92-3 (emphasis added). Using the test set forth in Advisory Opinion 92-3, the Subcommittee considered the specific expenditures noted above.

I. IMPERMISSIBLE USE OF CAMPAIGN FUNDS

1. Dues for Membership in a Service-Type Organization or as a Renewing Member

Committee Advisory Opinion 92-3 explained that "dues paid to other organizations whose primary purpose [wa]s community service oriented rather than politically oriented cannot be considered ordinary expenditures of the office or closely related to a campaign," and, thus, dues and contributions could not come from campaign funds.

Membership at a Private Club

The Committee finds that membership at a private club is not an appropriate use of campaign funds. Oftentimes, this membership is associated with meals--such as the Palmetto Club in Columbia--and not distinguishable from meal expenses incurred at a restaurant, and, therefore, it is an inappropriate use of campaign funds. Campaign funds only may be used to pay an expense at a private club if it is related to a campaign event. This position is in accordance with the position taken by the State Ethics Commission in Commission Advisory Opinion 2016-004.

2. Dry Cleaning

The issue has been raised about paying for dry cleaning of suits or clothing used for "official use" as a Member from campaign funds. The Committee finds dry cleaning these articles of clothing is a personal expense and campaign funds may not be used for this expenditure.

3. Member's Meal with a Constituent

In SEC AO2016-004, the State Ethics Commission addressed the issue of a public official's meals with constituents paid with the public official's campaign funds as follows:

> [I]t is important to note that the Commission has prosecuted enforcement matters under Section 8-13-1348 for the purchase of meals with campaign funds. A notable example of this is the case of former Lieutenant Governor Ken Ard. That complaint matter involved, among other things, questionable reimbursement from a campaign account for food at various restaurants. These expenditures were explained by Mr. Ard because these meals were occasions to meet with past and prospective contributors to raise money for his campaign account. This justification was rejected by the Commission. In a Consent Order reached by the parties in the Ard matter, the Commission stated "[i]t is now and always has been the Commission's position that . . . [p]urchasing normal daily meals with campaign funds while traveling on campaign related business either before or after an election is prohibited. Such expenditures are personal.
>
> SEC AO2016-004, p. 3 (January 20, 2016).

Therefore, the House Ethics Committee, in accordance with the State Ethics Commission, finds that if a Member has a meal with a constituent or lobbyist and the Member would have purchased the meal as a normal daily meal, then this meal is considered a personal expenditure. This meal should not be paid with campaign funds. The Committee also recognizes the exception discussed in Committee Advisory Opinion 94-22, concerning the permissibility of using campaign funds to sponsor an event with food where pending legislation is discussed.

4. Maintenance for a Member's Personal Vehicle Used for Campaigning or Official Business

Maintenance, fuel, and other expenses incurred by the Member in the operation of his or her vehicle during the campaign or the office he or she holds is not a permissible use of his or her campaign funds. See Committee Advisory Opinion 2014-1.

5. Fines and Penalties Received as a Result of Office

Payments of the fines or penalties received as a result of office (for example, a fine for failing to timely file a required report) and particularly those levied by the Committee are not allowed to be made with campaign funds because they are not related to the campaign or office as required by S.C. Code Ann. § 8-13-1348. See Committee Advisory Opinion 2000-1.

6. Gifts for Individual Members

The Committee finds that Members buying individual gifts for other Members are personal expenditures and, therefore, not allowed under S.C. Code Ann. § 8-13-1348.

7. Personal or Constituent's Living Expenses

The Committee finds that a Member may not pay personal or a constituent's living expenses with campaign funds because it is either personal in nature or not an expense traditionally incurred in House campaigns across the State nor clearly traditionally incurred in relation to the office held. See Committee Advisory Opinion 94-10. These expenditures are "personal expenses which are unrelated to the campaign or the office" as set forth in Section 8-13-1348(A).

8. An Election for a Different Office

As previously stated in Committee Advisory Opinion 92-5, the Committee finds a Member cannot use campaign funds received for one elective office toward achieving a different elective office, unless the Member obtains the contributors' written authorizations to do so.

II. PERMISSIBLE USE OF CAMPAIGN FUNDS

1. Contributions to Charitable Organizations, Churches, or Schools

In Senate Ethics Opinion 1997-2, the Senate Ethics Committee found that "participating in fundraising activities for organizations, churches, schools, colleges, universities, communities, . . . political parties, . . ., and a whole range of charitable giving and charitable good works is a longstanding function of elected officials, especially Members of The Senate of South Carolina." Thus, the Committee finds that contributions to charitable organizations, including churches or schools, is the type of expense incurred in relation to the office held. Therefore, contributions from a candidate or Member's campaign funds made to churches and other charitable organizations are permissible but the candidate or Member may not contribute campaign funds to any charitable

organization or church which the candidate, the Member, their immediate family, or business with which they are associated, derive a personal and financial benefit. Members are no longer required to follow Committee Advisory Opinions: 92-44; 92-46, as it relates to a school fundraising project; and 94-10, as it relates to contributions to churches. The Committee notes that contributions are also permitted to a charitable organization upon final disbursement of the candidate or Member's campaign funds. See SC Ann. § 8-13-1370(A)(2).

2. Sponsorships which include an Advertisement and Dues

With respect to sponsorships, such as for a booster club which included an advertisement and dues, the Committee previously stated in Committee Advisory Opinion 1999-1, "a contribution to a non-profit organization is allowed as an office or campaign related advertising expenditure under Section 8-13-1348(A) if it results in publication of the member's name and public title or the candidates' name and public office sought." Thus, the Committee finds that dues made by a Member to a booster club which includes the Member's advertisement is a permissible expenditure from the Member's campaign funds as the Member would not make this expenditure except for the official position the Member holds.

3. Member's Cell Phone Bill When the Cell Phone is Used for Campaigning and House Official Business as well as for Personal Use

In the past, it has been the practice of Members to pay for part of their cell phone bills from their campaign funds. The rationale was the Members did not want to own two cell phones--one for personal use and one for official use as a Member and for campaigning. It is not clear how the Member divided the cell phone bill to determine the amounts paid for personal and official use.

The Committee finds that dividing the cell phone bill between personal and official use would be permissible only if the Member purchased the phone with personal funds and could produce supporting documentation for the portion that was used for legislative business and campaigning prior to expending campaign funds for the relevant portion. However, the Committee finds the better practice is to dedicate a cell phone for official use as a Member and for campaigning, so that the entire cell phone bill would be a permissible expenditure from campaign funds. If the cell phone is purchased with campaign funds and dedicated for official use, then it must be listed as an asset on the campaign disclosure report, and the Member is subject to proper accounting and disbursement of this asset as set forth in Sections 8-13-1368 and 8-13-1370 of the Ethics Act.

4. Expenses for Promotional, Merchandise, or Advertising Items that contain the Candidate or Member's Name and Office

The Committee finds that campaign funds used to purchase promotional items to give away to the public with the candidate or Member's name and the office sought or held are related to the campaign and may be paid for with campaign funds.

5. Office Equipment Expenses

As previously stated in Committee Advisory Opinion 99-3, Members may purchase a computer, fax machine, or other permanent-type office equipment with campaign funds if such equipment is used solely for campaign or office-related purposes. These purchases must be listed as an asset on the campaign disclosure report. These expenditures must be reported on the Member's campaign disclosure form.

Upon final disbursement of a Member's campaign funds and assets, the Member is still subject to proper accounting and disbursement of all the campaign funds and assets, including any permanent-type office equipment, as set forth in SC Code Ann. § 8-13-1368 and § 8-13-1370.

6. Dues for Membership in an Organization or as a New Member

In Committee Advisory Opinion 98-3, the Committee found that contributions "to political or partisan groups are ordinary office related expenses" which are to be decided on a case-by-case basis. The Committee further stated that "an organization is deemed political or partisan only if its primary purpose is political or partisan, rather than community service oriented." Committee Advisory Opinion 98-3. In the past, expenditures of political dues made from campaign funds to a party caucus have been considered a permissible expenditure and it continues to be a permissible expenditure.

More recently, in Committee Advisory Opinion 2002-1, a Member was permitted to use his or her campaign funds to pay dues to a non-political organization if invited to join because of his or her status as a Representative.

The Committee is mindful of the Senate Ethics Committee Advisory Opinion 93-4, Example B, which provided the example of a member joining a civic organization as a way to keep in touch with the civic leaders in her district. The opinion noted, "The member would not otherwise be a member of the organization except for her office and receives no personal gain from being a member. The member may pay the dues of the organization from her campaign funds." Senate Ethics Committee Advisory Opinion 93-4, Example B.

Thus, the Committee adopts the reasoning provided in Senate Ethics Committee Advisory Opinion 93-4 that if the Member joined the civic organization as a way to assist him or her to stay in touch with civic leaders in his or her district, the dues would be a permissible expenditure from the campaign account. The Committee cautions that the Member must join the organization in his or her official capacity as a legislator.

7. Clothing

The issue has been raised about paying for suits or clothing from campaign funds. In the past, Members have been advised that purchasing clothing, that is, a suit or dress, for legislative session was a permissible expenditure from campaign funds if the Member limited his or her use of the clothing to strictly "official use" as a Member. The Committee finds that a Member may use his or her campaign funds for clothing purchases solely to wear as a Member during the legislative session or to an event in his or her district where he or she is attending as a House Member.

However, the Member must list the clothing as an asset on his or her campaign disclosure form and account for it when his or her campaign account is closed pursuant to the requirements in SC Code Ann. § 8-13-1368 and § 8-13-1370.

8. Gifts or Flowers for Office Staff, House Staff, or Constituents including Gifts, Resolutions, and Cards for Deaths, Births, or other Special Events sent by the Speaker or Members to other Members

In Committee Advisory Opinion 2015-3, the Committee found donating gifts of appreciation--such as fruit baskets--to custodial staff for the Blatt Building (Blatt Christmas Custodial Fund) and House staff and purchasing flowers for staff members and constituents due to certain events are not expenses that would exist irrespective of the Member's duties as an officeholder. Therefore, the Committee stated it was permissible to use campaign funds for these expenses. The Committee also finds that gifts (such as flowers), resolutions, and cards sent by the Speaker or Members to other Members for a death, birth, or other special event, are permissible expenditures from the Speaker or Members' campaign account.

9. Travel Expenses and Meals for a Person, District Group, or Team Being Recognized by the House of Representatives

The Committee finds it is proper for a Member to use campaign funds to pay for a person, group from his or her district, or team's travel expenses incurred and a meal also held for this person, group, or team as a direct result of the person, group, or team being recognized by the House of Representatives, as these expenses are an integral part of a Member's official service.

10. Resolutions and Flags

In Committee Advisory Opinion 93-6, the Committee found it was permissible for a Member to use campaign funds to frame and present Resolutions and interpreted Committee Advisory Opinion 92-3 to allow a Member to purchase a Statehouse flag for constituents or nonprofit organizations, such as schools or firehouses, because it could be seen as a service generally expected of a Member as well as an opportunity incidental and unique to membership in the House.

11. Signs that Benefit the Community, such as, Handicap Parking Signs and Community Oriented Signs

As previously mentioned in Committee Advisory Opinion 95-3, a Member may use campaign funds to purchase handicap parking signs for a fire department because it could be seen as a service generally expected of a Member as well as an opportunity incidental and unique to membership in the House. This analysis also applies to other signs that benefit the community, such as neighborhood watch signs, and thus, the payment of these signs would be a permissible campaign expenditure.

12. Food or Meals for Functions that are Directly Related to the Office

The Committee finds that Members may use campaign funds to sponsor an event such as one for a group of constituents and pay for food at such an event where the main purpose of the event was to discuss legislation. See Committee Advisory Opinion 94-2. The Member, however, should use discretion regarding the cost of the meals paid for from his or her campaign account for this purpose. In addition, as stated in Committee Advisory Opinion 95-7, a Member is allowed to use campaign funds to pay for a dinner held to thank constituents for support during one's membership.

13. Meals and/or Beverages for Campaign Workers

The Committee notes that it is permissible to pay for meals and alcoholic beverages incident to a meal for campaign workers out of campaign funds. However, the Committee cautions that Members should be cognizant of the liability that may arise, such as social host liability. Pursuant to S.C. Const. Art. XVII Section 14, under no circumstances should individuals, including campaign workers, under the age of twenty-one be served alcohol.

14. Meals for Members and Staff by a Committee Chairman, Speaker, and Speaker Pro Tempore

A Chairman of a House Legislative Committee requested the ability to use his campaign funds to pay for a Committee thank you dinner for all of the Members who serve on the Committee and all of the staffers who staff the Committee. The Committee finds that paying for a dinner for all of the Committee Members and staff as a thank you is a permissible expenditure from campaign funds as the Chairman would not have this expenditure but for the office he holds. The Committee also finds it is permissible for the Speaker and Speaker Pro Tempore to pay for meals for the Chairmen of Committees and Caucuses.

15. Tickets to a Political Event

In Committee Advisory Opinion 93-2, the Committee found that a Member may use campaign funds to purchase tickets to a political event. In addition, a Member may use campaign funds to purchase food for the Member or the Member's immediate family who also attend the political event. See Committee Advisory Opinion 93-28.

16. Legal Expenses Associated with a Candidate or Member's Campaign

As noted in Committee Advisory Opinion 2013-2, the Committee narrowly determined that legal expenses flowing directly from one's campaign may be an appropriate use of campaign funds, but the analysis must be fact specific. In addition, a candidate or Member may use campaign funds to reimburse personal funds spent for legal expenses flowing directly from one's campaign. See Committee Advisory Opinion 2013-2. However, this determination does not apply to legal expenses resulting from a candidate or Member's personal misconduct. A candidate or Member's misconduct becomes personal, for example, when a criminal charge or indictment is brought against that candidate or Member. At that time, the candidate or Member should not use his or her campaign funds to pay for the legal expenses incurred. If the criminal charges do not result in

conviction of the candidate or Member, the candidate or Member can reimburse his or her legal fees from campaign funds with guidance from the Committee. The Committee cautions that this may be done only on a case-by-case basis.

17. Newspapers or News Services

Many Members have subscribed to one or more SC newspapers or news services in order to keep abreast of matters in their districts and this state. The Committee finds that a Member may pay for SC newspaper subscriptions and news services from campaign funds pursuant to Section 8-13-1348(A) since keeping informed of local and state news and events is related to the office the Member holds.

Adopted September 1, 2016.

House Legislative Ethics Committee

P.O. BOX 11867
519 BLATT BUILDING
COLUMBIA, SC 29211
TELEPHONE: 803-734-3114
FAX: 803-734-8795

ADVISORY OPINION 2016-3

The House Legislative Ethics Committee (HEC) received two requests from Members for an advisory opinion regarding whether a Member is permitted to vote at any point in the legislative process regarding a Medicaid issue if the Member's business, which the Member has an ownership interest in receives payment from Medicaid. Specifically, one Member is a member of a LLC which owns a durable medical equipment provider who accepts Medicaid money for the medical equipment purchased or rented. The other Member is an owner of a pharmacy which accepts Medicaid money as payment for the prescriptions filled.

The question is whether the receipt of Medicaid payments by the Member's business results in a conflict of interest requiring the Member's abstention from voting on Medicaid issues at any point in the legislative process.

Pursuant to House Rule 4.16C.(4), the Committee renders the following advisory opinion.

DISCUSSION

Medicaid is a joint state and federal program that assists with the medical costs for people that have limited incomes and resources.[1] It provides coverage for families, children, pregnant women, the elderly and people with disabilities. It is administered by the state in accordance with federal requirements. To receive Medicaid, individuals apply to their state Medicaid agency and if eligible, receive an enrollment card. Medicaid covers home health services, physician services, laboratory and x-ray services, inpatient hospital services, and many other services, including medical prescriptions.[2]

---

[1] Medicare.gov: The Official U.S. Government Site for Medicare, June 9, 2016, https://www.medicare.gov/your-medicare-costs/help-paying-costs/medicaid/medicaid.html.
[2] Medicaid.gov, June 9, 2016, https://www.medicaid.gov/medicaid-chip-program-information/by-topics/benefits/medicaid-benefits.html.

When a client obtains services from a company that deals in durable medical equipment or through a pharmacy which fills prescriptions, the client may provide Medicaid as his or her insurance for payment of the item provided. The company providing these services does not have a special contract with Medicaid. The company is treated the same as any other similar provider. They are merely receiving a reimbursement for the item plus cost.

Pursuant to the Rules of Conduct regarding conflicts of interest in the Ethics, Government, Accountability, and Campaign Reform Act of 1991, S.C. Code Ann. § 8-13-700 provides,

> (A) No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a family member, an individual with whom he is associated, or a business with which he is associated. This prohibition does not extend to the incidental use of public materials, personnel, or equipment, subject to or available for a public official's, public member's, or public employee's use that does not result in additional public expense.
> (B) No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a family member, an individual with whom he is associated, or a business with which he is associated has an economic interest. A public official, public member, or public employee who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a family member, an individual with whom he is associated, or a business with which he is associated shall:
> (1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;
> (2) if the public official is a member of the General Assembly, he shall deliver a copy of the statement to the presiding officer of the appropriate house. The presiding officer shall have the statement printed in the appropriate journal and require that the member of the General Assembly be excused from votes, deliberations, and other action on the matter on which a potential conflict exists;
> (3) if he is a public employee, he shall furnish a copy of the statement to his superior, if any, who shall assign the matter to another employee who does not have a potential conflict of interest. If he has no immediate superior, he shall take the action prescribed by the State Ethics Commission;

(emphasis added). S.C. Code Ann. § 8-13-700.

In the instant situation, the Committee must first review the term "a business with which he is associated," which is defined as "a business of which the person or a member of his immediate family is a director, an officer, owner, employee, a compensated agent, or holder of stock worth one hundred thousand dollars or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class." S.C. Code Ann. § 8-13-100(4). It is the Committee's understanding that the Member who is a member of a durable medical company and the Member who is a pharmacist at the company he owns, may meet the definition of "business with which he is associated."

The next step is to ascertain the meaning of "economic interest" pursuant to S.C. Code Ann. § 8-13-100(11) as used in the Rules of Conduct. Economic interest means:

> an interest distinct from that of the general public in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a public official, public member, or public employee may gain an economic benefit of fifty dollars or more. This definition does not prohibit a public official, public member, or public employee from participating in, voting on, or influencing or attempting to influence an official decision if the only economic interest or reasonably foreseeable benefit that may accrue to the public official, public member, or public employee is incidental to the public official's, public member's, or public employee's position or which accrues to the public official, public member, or public employee as a member of a profession, occupation, or large class to no greater extent than the economic interest or potential benefit could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class.

(emphasis added). S.C. Code Ann. § 8-13-100(11).

Even if it appears that the Member may have a conflict of interest, the large class exception permitted in S.C. Code Ann. § 8-13-100(11)(b) allows Members of a profession, occupation, or large class to participate in and vote on decisions that would have an economic interest to them because of the profession, occupation, or large class to which they belong. The economic interest or benefit must be such as could have been reasonably foreseen to accrue to anyone in that profession, occupation, or large class.

House Ethics Advisory Opinion 92-19 provides guidance regarding the large class exemption in a conflict of interest situation. The questions in the opinion included "as a recipient of Medicaid funds, through my pharmacy, may I vote on provisions of the Appropriations Act designed to raise Medicaid benefits and can I vote on provisions designed to specifically affect Medicaid funding of pharmacies." The opinion explained that "the exception in the economic interest definition for the general benefits to the whole profession should allow you to vote on the items you addressed." House Ethics Advisory Opinion 92-19.

Additional opinions related to the large class exemption include: 1) House Ethics Advisory Opinion 92-37, where a licensed insurance agent was not prohibited from voting on insurance legislation because, under the guidance of the large class exception, the insurance agent would not accrue any benefit that would be foreseeably different than the benefit accruing to insurance agents as a whole; and 2) House Ethics Advisory Opinion 93-14, which allowed a Member, who was an insurance agent and broker, to participate in insurance issues before the Labor, Commerce, and Industry Committee as well as the Property and Casualty Subcommittee.

Thus, a Member who is a member of a LLC which owns a durable medical equipment provider that accepts Medicaid money for the medical equipment purchased or rented as well as a Member who owns a pharmacy and accepts Medicaid money for prescriptions filled both fall within the large class exception. They are able to vote and make decisions relevant to Medicaid

including budgetary issues because they receive an economic benefit from Medicaid reasonably foreseen to accrue to anyone in that profession.

CONCLUSION

In summary, the large class exception allows the Members to participate in voting on decisions relevant to Medicaid.

Adopted September 1, 2016.

House Legislative Ethics Committee

P.O. BOX 11867
519 BLATT BUILDING
COLUMBIA, SC 29211
TELEPHONE: 803-734-3114
FAX: 803-734-8795

ADVISORY OPINION 2016-4

The House Legislative Ethics Committee (HEC) received a request from a Member for an advisory opinion regarding whether a lawyer/legislator can be associated with a law firm that represents clients pursuant to S.C. Code Ann §§ 8-13-740 and 8-13-745 provided that the lawyer/legislator properly abstains from voting on matters relating to the clients whom the law firm represents. See also S.C. Code Ann §§ 8-13-700(B). Specifically, the law firm has clients that it currently represents in lobbying activities.

Pursuant to House Rule 4.16C.(4), the Committee renders the following advisory opinion.

DISCUSSION

SC Code Ann. § 8-13-740, part of the Rules of Conduct, provides:

(A) . . . (2) A member of the General Assembly, an individual with whom he is associated, or a business with which he is associated may not knowingly represent another person before a governmental entity, except:
(a) as required by law;
(b) before a court under the unified judicial system; or
(c) in a contested case, as defined in Section 1-23-310, excluding a contested case for a rate or price fixing matter before the South Carolina Public Service Commission or South Carolina Department of Insurance, or in an agency's consideration of the drafting and promulgation of regulations under Chapter 23 of Title 1 in a public hearing. . . .
(7) The restrictions set forth in items (1) through (6) of this subsection do not apply to:
(a) purely ministerial matters which do not require discretion on the part of the governmental entity before which the public official, public member, or public employee is appearing;
(b) representation by a public official, public member, or public employee in the course of the public official's, public member's, or public employee's official duties;

(c) representation by the public official, public member, or public employee in matters relating to the public official's, public member's or public employee's personal affairs or the personal affairs of the public official's, public member's, or public employee's immediate family. . . .

(B) A member of the General Assembly, when he, an individual with whom he is associated, or a business with which he is associated represents a client for compensation as permitted by subsection (A)(2)(c), must file within his annual statement of economic interests a listing of fees earned, services rendered, names of persons represented, and the nature of contacts made with the governmental entities.

(C) A member of the General Assembly may not vote on the section of that year's general appropriation bill relating to a particular agency or commission if the member, an individual with whom he is associated, or a business with which he is associated has represented any client before that agency or commission as permitted by subsection (A)(2)(c) within one year prior to such vote. This subsection does not prohibit a member from voting on other sections of the general appropriation bill or from voting on the general appropriation bill as a whole.

(emphasis added). SC Code Ann. § 8-13-740; see also House Ethics Committee Advisory Opinion 93-23. Thus, the Member may not represent another person before a governmental entity unless certain exceptions are complied with. Furthermore, if those exceptions are met, then the Member cannot vote on the section of the budget related to a particular agency if the Member or the business with which he is associated, that is, the law firm, has represented that client before that agency within one year prior to the vote. Further, the Member must report any legal fees earned, names of the persons represented, and the nature of contact with the governmental entities on his or her Statement of Economic Interests.

The Member also references another Rule of Conduct, SC Code Ann. § 8-13-745 which states:

(A) No member of the General Assembly or an individual with whom he is associated or business with which he is associated may represent a client for a fee in a contested case, as defined in Section 1-23-310, before an agency, a commission, board, department, or other entity if the member of the General Assembly has voted in the election, appointment, recommendation, or confirmation of a member of the governing body of the agency, board, department, or other entity within the twelve preceding months.

(B) Notwithstanding any other provision of law, after the effective date of this section, no member of the General Assembly or any individual with whom he is associated or business with which he is associated may represent a client for a fee in a contested case, as defined in Section 1-23-310, before an agency, a commission, board, department, or other entity elected, appointed, recommended, or confirmed by the House, the Senate, or the General Assembly if that member has voted on the section of that year's general appropriation bill or supplemental appropriation bill relating to that agency, commission, board, department, or other entity within one year from the date of the vote. This subsection does not prohibit a member from voting on other sections of the general appropriation bill or from voting on the general appropriation bill as a whole.

> (C) Notwithstanding any other provision of law, after the effective date of this section, no member of the General Assembly or an individual with whom he is associated in partnership or a business, company, corporation, or partnership where his interest is greater than five percent may enter into any contract for goods or services with an agency, a commission, board, department, or other entity funded with general funds or other funds if the member has voted on the section of that year's appropriation bill relating to that agency, commission, board, department, or other entity within one year from the date of the vote. This subsection does not prohibit a member from voting on other sections of the appropriation bill or from voting on the general appropriation bill as a whole.
> (D) The provisions of this section do not apply to any court in the unified judicial system.
> (E) When a member of the General Assembly is required by law to appear because of his business interest as an owner or officer of the business or in his official capacity as a member of the General Assembly, this section does not apply. . . .

(emphasis added). SC Code Ann. § 8-13-745; see also House Ethics Committee Advisory Opinion 92-35. Therefore, the lawyer/legislator is prohibited from representing clients for a fee in a contested case before state agencies, boards, and commissions in certain circumstances. First, the representation is prohibited by the lawyer/legislator or his firm if the Member voted in the election, appointment, confirmation, etc. of a member to the board's governing body within the twelve preceding months. Second, the representation is prohibited by the lawyer/legislator or his firm if the Member voted on the section of that year's appropriation's bill relating to that agency, board, etc. within one year of the vote. If the lawyer/legislator meets these exceptions, then the lawyer/legislator or his firm may represent clients for a fee in a contested case before agencies, boards, and commissions.

Lastly, there is another Rule of Conduct that must be considered. SC Code Ann. § 8-13-700(B), which requires a Member to abstain from voting on legislative issues that may be a conflict of interest and this conflict of interest must be noted on the record. In this situation, the Member will not represent or have any contact with the clients the law firm represents for lobbying activity. Moreover, the Member plans to abstain from voting on legislative issues pursuant to Section 8-13-700(B) which pertain to the clients the law firm represents in lobbying matters.

In an analogous opinion, SEC AO93-007, the State Ethics Commission considered whether a councilwoman who was employed with a law firm was disqualified from any votes, deliberations, or other actions regarding the firm client's rate request before the Public Service Commission (PSC) pursuant to SC Code Ann. § 8-13-700(B). The firm represented the client before the PSC and also engaged in lobbying activities. The Commission explained that the Council member would be required to follow the procedures of Section 8-13-700(B) if the issue would affect the economic interests of the law firm with which she was associated. The Commission noted that "the procedures of Section 8-13-700(B) are required if the matter requiring official action entails an economic benefit." SEC AO93-007, p.3.

In the instant case, the lawyer/legislator plans to work for a law firm which represents clients, which includes engaging in lobbying activity for those clients. It is the Committee's understanding that the lawyer/legislator will not directly engage in representation of these clients. If there is a vote on a bill in which the law firm is currently representing a client on lobbying

matters and it would affect the economic interest of the law firm with which the lawyer/legislator was associated, then the lawyer/legislator would follow the abstention procedure in Section 8-13-700(B).

Finally, while the HEC does not have jurisdiction over the South Carolina Rules of Professional Conduct governing lawyers, we have reviewed the rules regarding conflicts of interest, that is, Rule 1.10 (general imputation rule) and Rule 1.9 (duties to former clients).Rules of Professional Conduct, Rule 4017, SCACR. In the lawyer/legislator matter, the lawyer/legislator will not engage in any representation or contact with the clients that the law firm represents in lobbying activities.

CONCLUSION

In summary, a Member who is a lawyer/legislator can be associated with a law firm that represents lobbyist clients as long as the lawyer/legislator complies with the requirements of S.C. Code Ann §§ 8-13-700(B), 8-13-740, and 8-13-745. Specifically, the lawyer/legislator must abstain from voting on matters for the clients who are currently represented by the law firm at the time of the vote.

Adopted September 1, 2016.

Advisory Opinion 2015-1

The House Ethics Committee received the following question with a request for an advisory opinion on this issue:

> Is it appropriate for a member of the House of Representatives, who is also a salaried employee for [a state technical college], to make contact and introduce local business people to the continuing education sales department of [the Technical College]? While the Representative would not use his title as Representative in his introduction, he is known in the community as a public official. After the introduction, the Representative would not participate further in the sale process. The Representative wants to ensure his actions would not be considered a violation of the Ethics Act; more specifically, it would not be a violation of Section 8-13-700?

In response, the Committee renders the following opinion:

The Ethics Act prohibits a member from using his official position to obtain an economic benefit. Specifically, Section 8-13-700(A) provides, "No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a family member, an individual with whom he is associated, or a business with which he is associated. This prohibition does not extend to the incidental use of public materials, personnel, or equipment, subject to or available for a public official's, public member's, or public employee's use that does not result in additional public expense." S.C. Code Ann. § 8-13-700(A) (emphasis added).

As a member of the House of Representatives, it is clear that the member is a public official. *See* S.C. Code Ann. § 8-13-100(27). Pursuant to Section 8-13-700(A), a public official may not knowingly use his official office to obtain an economic interest. SEC Adv. Op. No. 2000-004 gives general guidance regarding Section 8-13-700 (A)-(B) as follows:

> Whereas, one of the most important functions of any law aimed at making public servants more accountable is that of complete and effective disclosure. Since many public officials serve on a part-time basis, it is inevitable that conflicts of interest and appearances of impropriety will occur. Often these conflicts are unintentional and slight, but at every turn those who represent the people of this State must be certain that it is the interests of the people, and not their own, that are being served. Officials should be prepared to remove themselves immediately from a decision, vote, or process that even appears to be a conflict of interest.

Research revealed there is not much decisional authority regarding Section 8-13-700(A). In SEC Adv. Op. No. 93-063, a DHHC Board Member entered into a contract for the provision of medical services with a local medical clinic only after the clinic could not find any other physicians to perform these services. The State Ethics Commission noted that the member did not knowingly use his official office to obtain an economic interest in violation of Section 8-13-700(A) and must comply with the requirements of Section 8-13-700(B). In the instant situation, it does not appear that the member is knowingly using his official position to obtain an economic interest for himself with the business with which he is associated.

Further, it appears from the member's scenario that the Technical College could receive an economic interest from any sales made due to the member's introductions. An economic interest is defined as "an interest distinct from that of the general public in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a public official, public member, or public employee may gain an economic benefit of fifty dollars or more." S.C. Code Ann. § 8-13-100(11)(a) (emphasis added).

The next issue to address is whether the Technical College is a "business" with which the member is associated." A business is defined as "a corporation, partnership, proprietorship, firm, an enterprise, a franchise, an association, organization, or a self-employed individual." S.C. Code Ann. § 8-13-100(3). A "'[c]orporation' means an entity organized in the corporate form under federal law or the laws of any state." S.C. Code Ann. § 8-13-100(10). "Business with which [you] are associated" means "a business of which the person or a member of his immediate family is a director, an officer, owner, employee, a compensated agent, or holder of stock worth one hundred thousand dollars or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class." S.C. Code Ann. § 8-13-100(4).

While the Technical College's Foundation, Inc., is listed as an incorporated entity according to the South Carolina Secretary of State's records, the Technical College is not listed as an incorporated entity and does not appear to fit the definition of "business" provided in the statute. We note that The State Ethics Commission previously found that a public institution of higher learning is a not a "business" as defined in the statute. SEC Adv. Op. No. 2009-002. Therefore, we conclude that the Technical College, as a public institution of higher learning, is not a "business" as defined pursuant to Section 8-13-100(3). The member indicated he is only a salaried employee and we further conclude he does not meet the parameters of "a business with which you are associated" pursuant to Section 8-13-100(4).

Thus, based upon the question presented, it appears the member's action is not in direct violation of the Ethics, Government Accountability, and Campaign Reform Act of 1991 because the Technical College is not a business with which you are associated as defined by the statute. However, we caution that the member's constituents may question whether the member's introduction, made while known as a public official, could be construed as implicitly promoting an economic benefit for the Technical College.

Adopted June 3, 2015.

House Legislative Ethics Committee

P.O. BOX 11867
519 BLATT BUILDING
COLUMBIA, SC 29211
TELEPHONE: 803-734-3114
FAX: 803-734-8795

Advisory Opinion 2015-2

A member of the House of Representatives has requested an advisory opinion from the South Carolina House Ethics Committee regarding the following question:

> Is there a violation of S.C. Code Ann. § 8-13-700 when an officer or member of a House Legislative Caucus refers Caucus business to himself or to a business with which he is associated and from which he makes a profit?

Pursuant to House Rule 4.16C.(5), the Committee renders the following advisory opinion.

EXECUTIVE SUMMARY

It is not a violation of Section 8-13-700 (or any other portion of the Ethics, Government Accountability, and Campaign Reform Act of 1991 ("the Act")) when an officer or member of a House Legislative Caucus (the "Caucus") refers Caucus business to himself, herself or a business with which the officer or member of the Caucus is associated and from which he or she makes a profit.

DISCUSSION

Section 8-13-700, provides:

> No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a family member, an individual with whom he is associated, or a business with which he is associated. This prohibition does not extend to the incidental use of public materials, personnel, or equipment, subject to or available for a public

official's, public member's, or public employee's use that does not result in additional public expense.

S.C. Code Ann. § 8-13-700(A) (2011). This is the operative provision under which the subject query falls.

To understand the statute, it is helpful to dissect this section into its component parts. This portion of the statute requires several things:

1. The person must be a **public official**, public member or public employee. A member of the general assembly meets the definition of "public official." S.C. Code Ann. § 8-13-100(27) (2011) ("public official" includes a State elected official). However, the person is not a "public member," S.C. Code Ann. § 8-13-100(26) (2011), or a "public employee." S.C. Code Ann. § 8-13-100(25) (2011).

2. The "public official" must use his or her **official office, membership, or employment.** This is a reference to the elected office. "Membership" here refers to a public member of a state board, commission or council. S.C. Code Ann. § 8-13-100(26) (2011). "Employment" here refers to an individual who is employed by the State or any of its political subdivisions, **not** an elected official. S.C. Code Ann. § 8-13-100(25) (2011). Thus, the only portion applicable to a member of the Caucus is "official office," which refers to the Caucus member's status as a "public official."

   While the Act does not define "official office," it does define "official capacity," which is informative. "Official capacity" means "activities which:

   (a) arise because of the position held by the public official...;
   (b) involve matters which fall within the official responsibility of ... the public official...; **and**
   (c) are services the agency would normally provide and for which the public official...would be subject to expense reimbursement by the agency with which the public official...is associated."

   S.C. Code Ann. § 8-13-100(30) (2011). To meet the definition of "official office," the activity or use must be related to the Caucus member's **official capacity**, not something that is collateral to those activities. Being in a House Legislative Caucus does not meet this requirement.

3. The use of the official office must be to obtain an **economic interest** for the public official, a family member, an associated individual, or an associated business. Again, because the Caucus does not meet the definition of "official office," this section would not apply to a use of membership in the Caucus to do anything, including providing services from which a Caucus member's personal business earns income.

4. The Act defines an "**economic interest**" as "an interest **distinct from that of the general public** in a purchase, sale, lease, **contract**, option, or other transaction or arrangement

involving property or services in which a public official, public member, or public employee may gain an economic benefit of fifty dollars or more." S.C. Code Ann. § 8-13-100(11)(a) (2011) (emphasis added). Under the question presented the interest here would be one "distinct from that of the general public" only insofar as someone in the general public would not have membership in the Caucus.

5. Even if the previous portions of Section 8-13-700(A) were met, any such use of the official office to obtain an economic interest for the Caucus member, a family member, an associated individual, or an associated business must be "**knowingly**." That term is not defined in the Act. The general definition of the term "knowingly" means: (A) to act intentionally, *State v. Green*, 397 S.C. 268, 724 S.E.2d 624 (2012), (B) to act with actual knowledge, *State v. Thompkins*, 263 S.C. 472, 211 S.E.2d 549 (1975), or (C) to act with deliberate blindness to obvious facts. *State v. Thompkins*. Thus, the statute is not a strict liability statute, but must involve a deliberate intent to use the "official office" for gain, or use the "official office" despite obvious fact that such activity would improperly benefit the official, his family, his associates, or his business. Again, this is a scienter requirement that precludes strict liability under this statute.

6. To be prohibited, the use of the official office must also **not be "incidental"** with regard to public materials, personnel, or equipment. "Incidental" is not defined in the Act. The term "incidental" generally means "depending upon or appertaining to something else as primary or depending upon another which is termed the principal; something incidental to the main purpose." *Archambault v. Sprouse*, 218 S.C. 500, 63 S.E.2d 459 (1951)(citing Black's Law Dictionary); *Charleston County Aviation Authority v. Wasson*, 277 S.C. 480, 289 S.E.2d 416 (1982) (citing *Archambault*); *Gurley v. USAA*, 279 S.C. 449, 309 S.E.2d 11 (Ct. App. 1983) (same). See also *Re Hon. Jimmy C. Bales*, Op. S.C. A.G. (11/7/07) (2007 WL 4284622) (discussing definition of "incidental" in context of licensing vehicle for roadway use). Of course, the primary use of the "official office" is to carry out the business of the State through official legislative activities – things like proposing legislation, conducting legislative hearings, participating in votes on various legislative matters. Activities associated with a House Legislative Caucus do not meet that test.

7. The use of the official office, even if "incidental," must not result in **additional public expense**. There are no facts set forth in the query or of which the Committee is otherwise aware that the incidental use by a House Legislative Caucus of any State resources resulted in additional public expense.

The next part of Section 8-13-700 governs using the "official office" to influence a governmental decision that would benefit a public official, a family member, an associated individual, or an associated business. S.C. Code Ann. § 8-13-700(B). The statute sets forth a procedure the public official must follow to recuse himself or herself from a vote on any issue that would benefit those groups. The remaining portions also address recusal: § 8-13-700(C) (no conflict of interest exists where public official's interest is in a blind trust); § 8-13-700(D) (section does not apply to any court in the unified judicial system); § 8-13-700(E) (section does not apply when member of the General Assembly required by law to appear because of his

business interest as an owner or officer of the business or in his official capacity as a member of the General Assembly). These provisions are not relevant to the inquiry before the Committee.

Another portion of the Act that informs the inquiry is Section 8-13-775, which provides:

> A public official, public member, or public employee may not have an economic interest in a contract with the State or its political subdivisions if the public official, public member, or public employee is authorized to perform an official function relating to the contract. Official function means writing or preparing the contract specifications, acceptance of bids, award of the contract, or other action on the preparation or award of the contract. This section is not intended to infringe on or prohibit public employment contracts with this State or a political subdivision of this State nor does it prohibit the award of contracts awarded through a process of public notice and competitive bids if the public official, public member, or public employee has not performed an official function regarding the contract.

S.C. Code Ann. § 8-13-775 (1995). The Committee understands that Caucus member's contract is not with the State or its political subdivisions but with the Caucus itself. Furthermore, there's nothing the Committee is aware of that would meet the test of this Section, which requires that the Caucus member be "authorized to perform an official function relating to the contract." The Caucus member's "official function" as a legislator does not contain any authorization related to the agreement with the Caucus.

Section 8-13-1120 may also be relevant. That section governs what must be included in a **statement of economic interest**, including "the source, type, and amount or value of income, not to include tax refunds, of substantial monetary value received *from a governmental entity* by the filer or a member of the filer's immediate family during the reporting period...." S.C. Code Ann. § 8-13-1120(A)(2)(1995) (emphasis added). The Caucus is not a "governmental entity" as defined in the Act:

> "*Governmental entity*" means the State, a county, municipality, or political subdivision thereof with which a public official, public member, or public employee is associated or employed. "*Governmental entity*" also means any charitable organization or foundation, but not an athletic organization or athletic foundation which is associated with a state educational institution and which is organized to raise funds for the academic, educational, research, or building programs of a college or university.

S.C. Code Ann. § 8-13-100 (17) (2011). A House Legislative Caucus would not fall within this definition of "governmental entity" such that Section 8-13-1120 requires a public official to disclose payments received from the Caucus on the statement of economic interest, therefore, the Act does not mandate disclosure.

Note that article 7 of Chapter 13 of Title 8 governs "Rules of Conduct" and it is under this article that 8-13-700 appears. Article 7 does *not* define "caucus." Article 13, however, which

governs "Campaign Practices," provides the following definition of "Legislative caucus committee." As used in article 13 of Chapter 13 of Title 8:

> "Legislative caucus committee" means:
>
> (a) a committee of either house of the General Assembly controlled by the caucus of a political party or a caucus based upon racial or ethnic affinity, or gender; however, each house may establish only one committee for each political, racial, ethnic, or gender-based affinity;
>
> (b) a party or group of either house of the General Assembly based upon racial or ethnic affinity, or gender;
>
> (c) "legislative caucus committee" does not include a "legislative special interest caucus" as defined in Section 2-17-10(21).

S.C. Code Ann. § 8-13-1300(21) (2008). This definition provides no guidance into how a "caucus" may be organized, what authority (if any) a "caucus" may have, and what duties (if any) a "caucus" may owe. The Chapter instead describes (A) filing requirements (S.C. Code Ann. § 8-13-1308 (G) (2008); and (B) restrictions on campaign contributions by a legislative caucus (S.C. Code Ann. § 8-13-1316 (2004); S.C. Code Ann. § 8-13-1340(2003)).

Also, of note is House Rule 3.13, which provides that legislative caucuses who use space in the Blatt Building or who use state-owned office or equipment (including internet and telephone service) may make payment as determined by the House Clerk. Legislative Caucuses are also not subject to FOIA pursuant to House Rule 4.5. Note further that members of legislative caucus committees as defined by Section 8-13-1300(21) are eligible for State health and dental insurance plans – however, there are 29 other non-legislative entities listed in the statute, none of which would fall within the "official office" of the House of Representatives. S.C. Code Ann. § 1-11-720 (2012).

Committee counsel reviewed a number of informal opinions from the State Ethics Commission and found nothing helpful to this specific inquiry. For instance, in SEC Adv. Op. No. 93-063, a SCDHEC Board Member entered into a contract for the provision of medical services with a local medical clinic only after the clinic could not find any other physicians to perform these services. The State Ethics Commission noted that the member did not knowingly use his official office to obtain an economic interest in violation of Section 8-13-700(A) and must comply with the requirements of Section 8-13-700(B). In the question presented, the member is not using his or her "official position" as defined by statute to obtain an economic interest for himself or herself for the business with which he or she is associated. Further, the use described does not appear to be a knowing use as proscribed by law.

CONCLUSION

Section 8-13-700(A) would not apply to the activity of a member of the House who is also a member of a legislative caucus and who earns income from doing business with that caucus. A House Legislative Caucus does not constitute an "official office" for purposes of the Act. Furthermore, a Caucus member would not be using his or her official office (i.e., as a member of the SC House of Representatives) to gain an economic benefit from a contract with the State or its subdivisions. Also, the Caucus does not qualify as a "governmental entity" for purposes of the Act's disclosure requirements. Therefore, a Caucus member would not violate Section 8-13-700(A) (or any other portion of the Act) by engaging in a transaction with the Caucus.

Adopted October 12, 2015.

House Legislative Ethics Committee

P.O. BOX 11867
519 BLATT BUILDING
COLUMBIA, SC 29211
TELEPHONE: 803-734-3114
FAX: 803-734-8795

ADVISORY OPINION 2015-3

Two members of the House of Representatives have requested an advisory opinion from the South Carolina House Ethics Committee regarding the following question:

Is it acceptable to use campaign funds for the following items:

(A) donating gifts of appreciation to the custodial staff for the Blatt Building, or donating gifts of appreciation for House staff;
(B) purchasing flowers for staff members and constituents due to certain events, such as hospitalization, or a death in the staff member or constituent's family; or
(C) purchasing hearing aid batteries?

Pursuant to House Rule 4.16C.(4), the Committee renders the following advisory opinion.

EXECUTIVE SUMMARY

It is appropriate to use campaign funds for items considered to be "ordinary expenses incurred in connection with an individual's duties as a holder of elective office." S.C. Code Ann. § 8-13-1348(A). The Committee finds donating gifts of appreciation to custodial staff for the Blatt Building and House staff and purchasing flowers for staff members and constituents due to certain events are not expenses that would exist irrespective of the member's duties as an officeholder. *See* HEC Advisory Opinion 92-3. Therefore, it is permissible to use campaign funds for these expenses. As a result of this opinion, members and candidates no longer have to comply with the restrictions set forth in Advisory Opinion 95-2 or follow sections 1 and 2 of the "Not Permissible" campaign fund uses in the "Laundry List" opinion of 1996 prohibiting the use of campaigns funds for these purposes. However, the Committee finds purchasing hearing aid batteries to be personal in nature so a member may not use campaign funds for this expense. *See* S.C. Code Ann. § 8-13-1348(A).

DISCUSSION

The House Ethics Committee received requests for an updated advisory opinion on Opinions 92-3 and 92-4[1] from 1996, in regards to using campaign funds to donate to the Blatt Building's custodial staff and the House staff in appreciation of their services, to purchase flowers for staff members and constituents, and to purchase hearing aid batteries.

Specifically, one member stated that he would like to use his campaign funds for a donation to the custodial staff, such as, towards a Christmas gift or to assist when the custodial staff are unable to work due to an emergency disaster. It was also requested that payment from campaign funds for gifts of appreciation be extended to the House staff.

Another member requested using his campaign funds to purchase flowers for House staff as "it has been common practice to purchase flowers for certain events for staff members, such as hospitalization or death in their family." It was also requested that a gift of flowers for constituents in the same limited circumstances be permitted from a member's campaign funds. These members requested an updated opinion as to whether, in these limited set of circumstances, a gift expenditure would be legitimate when made from the member's campaign account.

In addition, a member requested the purchase of hearing aid batteries from the member's campaign account be approved as an ordinary, office related expense. The member noted:

> Many members of the General Assembly wear hearing aid batteries and must do so in order to complete or proficiently perform their duties as a legislator. The life of these batteries is extremely limited. The average life of a set of batteries is approximately three days of normal wear. The usage of those batteries doubles during session because of the amount of hours they are in use. The hearing aid issue is recognized by S.C. Vocational Rehabilitation as necessary in order to perform one's duties as a legislator. The request is whether or not it would be permissible to purchase those batteries or, in any event, the extra batteries necessary during the weeks of session.

Initially, a review of S.C. Code Ann. § 8-13-1348(A) provides:

> (A) No candidate, committee, public official, or political party may use campaign funds to defray personal expenses which are unrelated to the campaign or the office if the candidate is an officeholder nor may these funds be converted to personal use. The prohibition of this subsection does not extend to the incidental personal use of campaign materials or equipment nor to an expenditure used to defray any ordinary expenses incurred in connection with an individual's duties as a holder of elective office.

(emphasis added).

The State Ethics Commission (SEC) has previously recognized, "the term 'ordinary and necessary,' with regard to expenses, is not defined in the Ethics Reform Act." SEC AO 93-061. The SEC has stated it is "mindful that, unlike the federal guidelines, the Ethics Reform Act does

---

[1] The Committee was unable to locate Opinion 92-4. This opinion is discussed in the S.C. House Legislative Ethics Committee Memorandum, dated April 4, 1996, commonly referred to as the "Laundry List" opinion. This Laundry List opinion was not officially adopted by the Committee.

not provide a laundry list of acceptable expenditures to be made from campaign funds and prohibited expenditures." SEC AO 2003-006. In this more recent opinion, the SEC admitted that it "relied on a House Legislative Ethics Committee Memorandum to provide guidance to candidates and public officials after the fact." *Id.* This referenced memorandum is known as the "Laundry List" opinion. The SEC also stated, "Section 8-13-1348 gives the public official and candidate broad discretion in determining what is an ordinary expense or related campaign expense." SEC AO 2003-006. In its discussion of campaign funds, the SEC stated that contributions made to charitable organizations were made at final disbursement because "they are not expenses related to the campaign nor are they expenses normally incurred in connection with an elective official's duties." *Id.*

With little guidance provided in this area, a search of the approach taken by other states revealed an attorney general's opinion in Nevada (Nevada Opinion) addressing the same issue. The Nevada Opinion evaluated South Carolina's approach, albeit the approach was prior to the Ethics Reform Act, it provides some guidance. The Nevada Opinion stated:

> One state, South Carolina, has even suggested that the term "personal use" can only be defined by looking at the nexus between the use of the funds and the intent of the donor. On August 17, 1988, the South Carolina Attorney General's Office opined that while "[o]nly a court could categorically conclude whether particular facts or circumstances constitute a violation of such provisions" there is a "possibility that campaign funds are impressed with a trust which controls the manner of expending such funds for purposes other than campaign expenses." Op. S.C. Att'y Gen. No. 88-150 (August, 1988).

2002 Nev. Op. Att'y Gen. No. 23 (May 21, 2002).

After evaluating the federal law on campaign fund expenditures, the Nevada Opinion concluded as follows:

> The term "personal use," as used in NRS 294A.160(1), has not been specifically defined by the Nevada Legislature or the Nevada courts. An analysis of the personal use laws of the federal government and other states reveals a broad definition for the term "personal use." Nevada's legislative history reveals that the Legislature generally intended to disallow expenditures of campaign monies for typical personal and household expenses such as food, clothing, rent, utilities and the like. Based on that legislative history, we conclude that in enacting NRS 294A.160(1), the Nevada Legislature intended to enact a standard similar to that adopted by the federal government and articulated in 11 C.F.R. 113.1(1), and to thereby prohibit use of campaign funds if the particular use would fulfill a commitment, obligation, or expense that would exist irrespective of the candidate's campaign or duties as an officeholder.

2002 Nev. Op. Att'y Gen. No. 23 (May 21, 2002)

Further, the House Ethics Committee gave guidance to the permissible and impermissible use of campaign expenditures in House Legislative Ethics Advisory Opinion 92-3. The question asked in the opinion was as follows:

> Questions: What are the permissive uses of campaign funds under the new Ethics Act? Specifically, whether the following expenses would be considered personal or campaign/office related: purchase of flags for schools, local governments, and other non-profit organizations; membership dues or contributions to various clubs and service organizations; and, expenditures for office items such as lamps, photos, etc.
>
> Funds collected by a candidate for public office is money received by contributors who are attempting to help the candidate get elected. Those funds should, thus, be utilized only for the purposes of facilitating the candidate's campaign and assisting the candidate carry out his or her duties of office if elected. §8-13-1348 of the Ethics Act, which took effect January 1, 1992, specifies that campaign funds may not be used "to defray personal expenses which are unrelated to the campaign or the office." Those funds may, however, be used "to defray any ordinary expenses incurred in connection with an individual's duties as a holder of elective office." Using that language as a guide, each expenditure should be judged upon whether it is an ordinary office or campaign related expenses or instead a personal expense not connected to the ordinary duties of office.
>
> The purchase of flags for schools, scouts, etc. in your district is a service generally expected of a House member and can be seen as a constituent service and an informal responsibility of the office. Therefore, campaign funds could be used for that purpose. . . .

HEC AO92-3 (emphasis added).

"The Laundry List" opinion, which was not officially adopted by the Committee, provides guidance on the use of campaign money to purchase flowers for constituents' weddings, as well as, high school and college graduations. This opinion explained,

> These expenditures are not "ordinary expenses incurred in connection with an individual's duties as holder of an elective office." citing House Leg. Ethics Com. Adv. Op. No. 92-3. Furthermore, in Advisory Opinion 92-3, the Committee decided that campaign funds "should ... be utilized only for the purposes of facilitating the candidate's campaign and [campaign funds should be used only to assist] the candidate [in] carry[ing] out his or her duties of office if elected." (emphasis added) Although it could be argued that gifts and flowers given to constituents help a candidate get elected, and these contributions also assist the member in carrying out the duties of office, the Committee takes the position that gifts such as these are personal in nature and must be paid out of personal funds.

(emphasis added).

The "Laundry List" opinion also noted under "non permissible expenditures, item 2," that gifts or bonuses for office staff were not "ordinary expenses incurred in connection with an individual's duties as a holder of elective office" citing House Legislative Ethics Opinion No. 92-3. It provided that pursuant to Opinion No. 95-2, "it cannot be reasonably asserted that this expenditure [donation of campaign funds to buy Christmas gifts for the Blatt Building custodial staff], is traditionally expected of and made by members, and it would be improper to make the same from our campaign account."

However, this current Committee views this position to be incorrect. The member would not be donating to the Blatt Building's custodial staff or House staff gifts of appreciation for services provided or purchasing flowers for staff members and constituents in times of tragedy if he or she did not hold elective office and work in his or her legislative office in the Blatt Building. *See* HEC Advisory Opinion 2002-1 ("When a member is invited to a non-political function or is asked to join a non-political group only because of the member's status as a Representative, the invitation could be considered sufficiently tied to the member's campaign or office such that campaign funds may be used.") Thus, this Committee finds that for the limited purposes of donating to the Blatt Building's custodial staff, as well as, providing gifts of appreciation for House staff or purchasing House staff and constituents flowers during hospitalization or a death in their family, these expenditures appear to be expenditures traditionally expected of and made by members. Therefore, it would be proper to make these expenditures from the member's campaign account.

The second request concerns the purchase of hearing aid batteries from the member's campaign account. This Committee is cognizant of **The Rehabilitation Act of 1973**, Pub. L. No. 93-112, 87 Stat. 355 (codified as amended in scattered sections of the U.S. Code), which protects qualified individuals from discrimination based on their disability. This law applies to employers and organizations that receive financial assistance from any Federal department or agency. A disability includes deafness or hearing impairment. In fact, the member stated that he was furnished with a hearing aid by S.C. Vocational Rehabilitation to assist him in his job as a member of the General Assembly. Thus, his request is whether or not it would be permissible to purchase those batteries or, in any event, the extra batteries necessary during the weeks of session.

At the outset, it would appear that using campaign funds to generally purchase hearing aid batteries is more in the nature of a personal expenditure. The more difficult question is whether the extra batteries necessary during the weeks of session could be purchased with campaign funds. It is clear that these hearing aid batteries could only be used during the legislative session and not when the member was not conducting his official business as a member.

This issue is similar to the analogy of purchasing clothing for legislative session and requiring the member to limit his or her use of the clothing to strictly official use as a member. It does not appear practical with hearing aid batteries to limit their use to only when the member has official business. We are also mindful of what is to prevent a member from asking for the purchase of glasses, dentures, etc. from campaign funds to be worn only during official business. Thus, the Committee concludes that the costs for hearing aid batteries are a personal expense and should not be paid for with campaign funds.

CONCLUSION

The Committee finds donating to the Blatt Building's custodial staff and House staff and purchasing flowers for staff members and constituents due to certain events are not expenses that would exist irrespective of the member's duties as an officeholder. *See* HEC Advisory Opinion 92-3. Therefore, it is permissible to use campaign funds for these expenses. However, the

Committee finds purchasing hearing aid batteries to be personal in nature so a member may not use campaign funds for this expense. *See* S.C. Code Ann. § 8-13-1348(A).

Adopted November 2, 2015.

Advisory Opinion 2014-1

When a member of the House of Representatives uses a personal vehicle for travel related to the campaign or office, what is the appropriate method of reimbursement?

The following opinion assumes that the travel in question is related to the campaign or office as required by S.C. Code Section 8-13-1348 and does not attempt to discern when travel is appropriately reimbursable pursuant to 8-13-1348. The Committee finds that members must use the standard mileage rates as established by the Internal Revenue Service. Mileage may not exceed the actual distance traveled and must be computed using the shortest practical route. Further, the Committee advises keeping a record of such mileage, including the date, starting point, and destination. Lastly, the Committee determines that this opinion applies prospectively. Going forward, reimbursement at the IRS rate is the only appropriate method of reimbursement for use of a personal vehicle for travel related to the campaign or office.

Adopted June 3, 2014.

Advisory Opinion 2014-2

The House Ethics Committee received the following question with a request for an advisory opinion on the issue:

> "Following the 2012 primary election, my opponent was declared the primary winner. However, the party's decision to declare my opponent the winner and placed on the ballot was reached improperly because my opponent had not filed his candidacy paperwork properly. Therefore, I decided to engage the services of an attorney to challenge the party's decision. I considered the legal expenses to be proper campaign expenditures; however, I was not certain whether the Ethics Act would permit the use of campaign funds for legal expenses. Further, I understood the question to be one of first impression that would need to be resolved by the House Ethics Committee. Accordingly, out of an abundance of caution, I decided to use my personal funds to pay for the legal expenses until such time that the Committee could reach a resolution as to whether such legal expenses may properly be paid with campaign funds. Subsequently, the House Ethics Committee decided in Advisory Opinion 2013-2 that legal expenses flowing directly from someone's campaign may be an appropriate use of campaign funds. Therefore, I would like to know whether it would be appropriate for me to use campaign funds to reimburse myself for the legal expenses paid with my personal funds associated with the abovementioned legal action."

In response, the Committee renders the following opinion.

In House Ethics Advisory Opinion 2013-2, the Committee determined that "legal expenses flowing directly from someone's campaign may be an appropriate use of campaign funds." The Committee determines that the lawsuit referenced above directly flows from the candidate's campaign such that the payment of legal expenses would be an appropriate use of campaign funds in compliance with S.C. Code Section 8-13-1348, which provides that campaign funds may be used only for expenses which are related to the campaign or office. Because it would be an appropriate use of campaign funds to pay for the legal expenses in this instance, the Committee finds that it would also be appropriate to use campaign funds to reimburse oneself for the legal expenses paid with personal funds. Like all expenditures of campaign funds, the reimbursement must be disclosed and identified as such on the candidate's campaign disclosure report in accordance with the provisions of the Ethics Act.

Adopted June 5, 2014.

Advisory Opinion No. 2013-1

Issue: A question arose whether candidates who found themselves without primary opposition as a result of the Supreme Court's rulings in Anderson v. South Carolina Election Commission, Op. No. 27120 (S.C. Sup. Ct. filed May 2, 2012) or Florence County Democratic Party v. Florence County Republican Party, Op. No. 27128 (S.C. Sup. Ct. filed June 1, 2012) were entitled to both a primary and a general election cycle for purposes of applying the campaign contribution limits established by S.C. Code Ann. Sections 8-13-1314 and 8-13-1316.

Answer: Section 8-13-1300(10) (Supp. 2011) states, in pertinent part, within the definition of "election cycle," that "the contribution limits under Sections 8-13-1314 and 8-13-1316 . . . are for each primary, runoff, or special election in which a candidate has opposition and for each general election." This statute further states that "[i]f the candidate remains unopposed during an election cycle, one contribution limit shall apply." (emphasis added).

This Committee finds that competition between candidates existed and cannot be subsequently erased by the Supreme Court's rulings. This Committee recognizes certification at the end of filing constitutes candidacy for the purpose of determining if opposition exists. Therefore, if a candidate had primary opposition that was originally certified and later decertified, then that candidate had opposition. This opposition under our statutes allows the candidate to receive an election cycle for his or her primary.

Advisory Opinion 2013-2

Issue: Whether campaign funds may be used to pay for legal expenses associated with a candidate's campaign?

Answer: Section 8-13-1348 provides guidance on when campaign funds may be used. Specifically, section 8-13-1348(A) states:

> (A) No candidate, committee, public official, or political party may use campaign funds to defray personal expenses which are unrelated to the campaign or the office if the candidate is an officeholder nor may these funds be converted to personal use. The prohibition of this subsection does not extend to the incidental personal use of campaign materials or equipment nor to an expenditure used to defray any ordinary expenses incurred in connection with an individual's duties as a holder of elective office.

The 2012 election caused multiple lawsuits regarding who should appear on the ballot and lawsuits to insure the integrity of the election. Such lawsuits cause legal expenses that likely directly stem from one's election, one's campaign. Thus, this Committee narrowly determines that legal expenses flowing directly from someone's campaign may be an appropriate use of campaign funds. This Committee cautions that this holding does not reach lawsuits resulting from a candidate's personal misconduct. Like all determinations on whether campaign funds are properly used, this analysis must be fact specific.

Advisory Opinion 2013-3

Questions:

I. Whether a person with an open campaign account must file an updated Statement of Economic Interest form by April 15th.

II. Whether a person filing a Statement of Economic Interest form must include state retirement.

Answers:

I. Yes. A person with an open campaign account must file an updated Statement of Economic Interest form by April 15th. Section 8-13-1110 states that a "public official" must file a Statement of Economic Interest form. Section 8-13-100(27)'s definition for "public official" includes a "candidate." "Candidate" is defined in part as, "a person who seeks appointment, nomination for election, or election to a state or local office, or authorizes or knowingly permits the collection or disbursement of money for the promotion of his candidacy or election." S.C. Code Ann. § 8-13-100(5). This Committee concludes that a person with an open campaign account has authorized the collection or disbursement of money for his candidacy. Therefore, for the limited purpose of whether a Statement of Economic Interest form should be filed, a person with an open campaign account should file such a form. This determination in no way impacts whether a person will be found to be a candidate for purposes of appearing on a ballot.

A person required to file a Statement of Economic Interest form under section 8-13-1140 is required to file an updated form by April 15. No fines will be imposed until after the lapsing of the five-day grace period under section 8-13-1510. Further, it should be noted that the Committee issues this opinion in order to bring clarification to persons with open House campaign accounts. Therefore, this opinion is prospective in nature.

II. No. Section 8-13-1120(A)(2) discusses the disclosure requirements for money received by a member from a governmental entity:

> (A) A statement of economic interests filed pursuant to Section 8-13-1110 must be on forms prescribed by the State Ethics Commission and must contain full and complete information concerning:
>
> . . .
>
> (2) the source, type, and amount or value of income, not to include tax refunds, of substantial monetary value received from a governmental entity by the filer or a member of the filer's immediate family during the reporting period;
>
> . . .

It is the finding of this Committee that retirement accounts are funds previously invested by the person into a retirement system. Any money received by the person does not need to be disclosed as these funds are merely being returned to the person with the growth of the funds. Further, it is notable that the online instructions given by candidates and members when completing their Statement of Economic Interest forms specifically states that retirement should not be included.

Note: A61 (effective June 2013) changed the date for filing the Statement of Economic Interests from April 15th to March 30th.

Advisory Opinion 2013-4

The following questions were posed to the House Legislative Ethics Committee:

> 1) Is it appropriate for a member of the South Carolina General Assembly to request and use the state airplane to transport an out of state witness to testify before a legislative subcommittee?
>
> 2) Is it appropriate for a person to receive compensation for testimony before a legislative subcommittee without complying with procedures to register as a lobbyist?

Dealing with question number one first, the Committee believes there are two provisions that control the answer to this question. First, current budget proviso 89.24, second, section 8-13-700(A).

Proviso 89.24 lays out a very specific process by which any public official may gain access to the state plane. Additionally, the proviso suggests that a violation of this process may be ***EVIDENCE*** of a violation of section 8-13-700(A). In the absence of specific facts the Committee cannot render an opinion on the applicability of this proviso.

As for section 8-13-700(A) which provides:

> *(A) No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a family member, an individual with whom he is associated, or a business with which he is associated. This prohibition does not extend to the incidental use of public materials, personnel, or equipment, subject to or available for a public official's, public member's, or public employee's use that does not result in additional public expense.*

The Committee does not believe that the use of a state plane directly violates this section as the use of the plane by someone other than the member of the General Assembly, in this instance, does not cause a personal benefit to accrue to the member.

That said, however, the Committee does find and opine that the use of the state airplane to transport witnesses for testimony before legislative subcommittees may violate section 8-13-765 of the State Ethics Act, which prohibits the use of government resources for political purposes.

The Committee does not believe it is an appropriate use of taxpayer dollars and resources to transport advocates for or against legislation, and therefore for and against political positions of individual legislators, to Columbia, or any other location, to advocate for their positions. The use of state resources is to be exclusively for the business of the state, not the expression or private opinions before the legislature.
As the business of the state may be wide and varied this opinion will not discuss precisely what facts would give rise to a violation of 8-13-765. Those facts would have to be considered on a case by case basis by the Committee.

However, the Committee will, going forward, examine any allegations of use of the state plane for the travel of advocates with a presumption that such use violates 8-13-765.

Advisory Opinion 2013-4

This opinion should be considered a prospective rule for all members of the South Carolina House of Representatives, that the use of the state plane to transport advocates or witnesses for the purposes of appearing before the subcommittees of the House will likely constitute a violation of the Ethics Act and require repayment of all state funds expended to provide that transportation.

As to question number two, the House Legislative Ethics Committee has no jurisdiction over the registration, operation or regulation of lobbyist. The State Ethics Commission is the only body that can determine whether a person has met the definition of "lobbyist" and was therefore required to register.

As such, the Committee declines to offer an opinion on question number two. However, the Committee would suggest that any person desiring an answer to this question should contact Ms. Cathy Hazelwood of the state Ethics Commission at the following address:

South Carolina State Ethics Commission
Columbia, South Carolina 29201

(803) 253-4192 (office)
(803) 253-7539 (fax)

OPINION 2006-1

TO: The Honorable Robert William Harrell, Jr.
Speaker of the House of Representatives

FROM: J. Roland Smith
Chairman, House Legislative Ethics Committee

DATE: JUNE 16, 2006

RE: OPINION 2006-1

ISSUE

It has been brought to the attention of the House Legislative Ethics Committee that there may be some confusion surrounding the interpretation of South Carolina Code Section 8-13-1300(7) and (31), which has been referred to as the "45-Day Rule". The "45-Day Rule" provides that certain communications made within the final 45 days before an election must be reported as "expenditures" but are not "contributions" and, therefore, are not subject to the contribution limitations of the Ethics Act. These communications are defined in South Carolina Code Section 8-13-1300(31)(c) and are referred to as "(31)(c) communications" throughout this Opinion.

The Committee held a public meeting on June 1, 2006 and issued the following Formal Advisory Opinion. In this meeting the Committee considered the following questions:

1. What are (31)(c) communications as defined by 8-13-1300(31)(c)?
2. Are there any restrictions on how much a legislative caucus committee can spend on (31)(c) communications?
3. Where should a legislative caucus committee deposit funds to be used on (31)(c) communications? Must these funds be reported?
4. Must a legislative caucus committee report expenditures on (31)(c) communications?

SUMMARY

Essentially, if a House legislative caucus committee makes a communication within 45 days of an election that promotes or supports a candidate or attacks or opposes a candidate, regardless of whether the communication expressly advocates a vote for or against a candidate, the committee must deposit the funds used to pay for that communication in a separate account and must report those funds as expenditures. A House legislative caucus committee does not have to report as contributions the funds it receives that are used to pay for such communications and there is no limit on how much a House legislative caucus committee can spend on such communications.

DISCUSSION

(31)(c) communications are defined by South Carolina Code Section 8-13-1300(31)(c). That Section provides:

> (31) "Influence the outcome of an elective office" means:
> (c) any communication made, not more than forty-five days before an election, which promotes or supports a candidate or attacks or opposes a candidate, regardless of whether the communication expressly advocates a vote for or against a candidate. For purposes of

> this paragraph, "communication" means (I) any paid advertisement or purchased program time broadcast over television or radio; (II) any paid message conveyed through telephone banks, direct mail, or electronic mail; or (III) any paid advertisement that costs more than five thousand dollars that is conveyed through a communication medium other than those set forth in subsections (I) or (II) of this paragraph. "Communication" does not include news, commentary, or editorial programming or article, or communication to an organization's own members.

The statute addresses only those communications made within 45 days of an election. During those critical days before an election, the statute expands the definition of communications that are characterized as influencing the outcome of an elective office to include those (31)(c) communications. (31)(c) communications, by definition, are only made within the 45 days before an election.

South Carolina Code Section 8-13-1300(7) defines the term "contribution". That Section provides in part:

> "Contribution" does not include . . . (b) a gift, subscription, loan, guarantee upon which collection is made, forgiveness of a loan, an advance, in-kind contribution or expenditure, a deposit of money, or anything of value made to a committee, other than a candidate committee, and is used to pay for communications made not more than forty-five days before the election to influence the outcome of an elective office as defined in Section 8-13-1300(31)(c). These funds must be deposited in an account separate from a campaign account as required in Section 8-13-1312.

8-13-1300(7) exempts from the definition of "contribution" anything of value made to a committee used to pay for communications defined in 8-13-1300(31)(c) made within 45 days of an election. This language makes it clear that even though a communication made within 45 days of an election falls within the definition of (31)(c) as influencing the outcome of an elective office, that communication is not a contribution.

Because (31)(c) communications are specifically exempted from the definition of contribution, legislative caucus committees are not restricted by the $5,000 contribution limit found in South Carolina Code Section 8-13-1316. Therefore, a legislative caucus committee may spend any amount on (31)(c) communications within 45 days of an election.

Legislative caucus committees must deposit funds used for (31)(c) communications in a separate account pursuant to the last sentence of 8-13-1300(7). However, they do NOT have to report the receipt of funds to be used for (31)(c) communications within 45 days of an election. 8-13-1304(G) provides in part:

> Notwithstanding any other reporting requirements in this chapter, a political party, legislative caucus committee, and a party committee must file a certified campaign report upon the receipt of anything of value which totals in the aggregate five hundred dollars or more. For purposes of this section, "anything of value" includes contributions received which may be used for the payment of operation expenses of a political party, legislative caucus committee, or a party committee.

This section requires legislative caucus committees to report all contributions over $500, whether used for operating expenses or campaign purposes. Because funds to be used for (31)(c) communications within 45 days of an election are not "contributions", they do not have to be reported like operating funds and campaign funds.

Funds used to pay for (31)(c) communications within 45 days of an election are "expenditures" as defined by the Ethics Act. South Carolina Code Section 8-13-1300(12) defines "expenditure" as a purchase, payment, loan, forgiveness of a loan, an advance, in-kind contribution or expenditure, a deposit, transfer of funds, gift of money, or anything of value for any purpose. Therefore, a legislative caucus committee must report money spent on (31)(c) communications.

Legislative caucus committees making expenditures on (31)(c) communications within 45 days of an election must maintain an account of their expenditures; the name and address of each person to whom an expenditure is made including the date, amount, purpose, and beneficiary of the expenditure; and any proof of payment for each expenditure. See 8-13-1302. Pursuant to Section 8-13-1308(D)[1], legislative caucus committees making (31)(c) communications within 45 days of an election must file a preelection report showing expenditures to or by the committee for the period ending twenty days before the election. [2]

Legislative caucus committees making (31)(c) communications within 45 days of an election are required to immediately file a campaign report upon incurring expenditures in excess of $10,000 in the case of a candidate for statewide office and $2,000 in the case of a candidate for any other office within the calendar quarter in which the election is conducted or twenty days before the election (whichever period is greater). The expenditure does not have to be made, only incurred, to trigger this section's reporting requirements. See 8-13-1308(D)(2). Certified campaign reports must contain the total expenditures made by or on behalf of the committee and the name and address of each person to whom an expenditure (from campaign funds) is made including the date, amount, purpose, and beneficiary of the expenditure.

Legislative caucus committees making (31)(c) communications within 45 days of an election must identify the caucus in the communication. 8-13-1354 requires committees or persons making expenditures on communications "supporting or opposing a public official, a candidate, or a ballot measure" to identify their name and address. By definition, a (31)(c) communication is a communication made within 45 days of an election "which promotes or supports a candidate or attacks or opposes a candidate."

---

[1] Section 8-13-1308(d)(2) provides:
(2) A committee immediately shall file a campaign report listing expenditures if it makes an independent expenditure or an incurred expenditure within the calendar quarter in which the election is conducted or twenty days before the election, whichever period of time is greater, in excess of:
(a) ten thousand dollars in the case of a candidate for statewide office; or
(b) two thousand dollars in the case of a candidate for any other office.

[2] Legislative caucus committees do not have to file an initial certified campaign report upon spending over $500 on (31)(c) communications within 45 days before an election. 8-13-1308(A) states: "Upon the receipt or expenditure of campaign contributions or the making of independent expenditures totaling an accumulated aggregate of five hundred dollars or more, a candidate or committee required to file a statement of organization pursuant to Section 8-13-1304(A) must file an initial certified campaign report within ten days of these initial receipts or expenditures." Because (31)(c) communications are not considered contributions, and because legislative caucus committees making expenditures based upon party affiliation do not qualify as independent expenditures, this requirement is not applicable.

House Legislative Ethics Committee

House of Representatives
P. O. BOX 11867 TELEPHONE 734-3114
ROOM 519 BLATT HOUSE OFFICE BUILDING
Columbia, SC 29211
FAX# (803) 734-8795

MEMORANDUM

TO: MEMBERS OF THE HOUSE OF REPRESENTATIVES

FROM: HOUSE LEGISLATIVE ETHICS COMMITTEE

RE. ADVISORY OPINION RELATED TO THE USE OF CAMPAIGN FUNDS

DATE: MARCH 19, 2003

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee is issuing the following Advisory Opinion for your information. This Opinion is binding as to House members and candidates effective immediately.

Advisory Opinion 2003-1

Issues:

1. If a member records campaign debt during an election cycle, can the member receive contributions to retire the debt after the General Election?
2. What limits apply to contributions received to retire debt?
3. Is there a time limit on when contributions to retire debt may be received?
4. What types of debt may be satisfied in this manner?
5. Can contributions received after a cycle has closed be credited to the closed cycle?

Answer:

1. If a member records campaign debt during an election cycle, can the member receive contributions to retire the debt after the General Election?

Section 8-13-1318 states:

> If a candidate has a debt from a campaign for an elective office, the candidate may accept contributions to retire the debt, even if the candidate accepts contributions for another elective

office or the same elective office during a subsequent election cycle, as long as those contributions accepted to retire the debt are:

(1) within the contribution limits applicable to the last election in which the candidate sought the elective office for which the debt was incurred; and

(2) reported as provided in this article.

If the member accrues debt during an election, he can receive contributions to retire the debt after the General Election. The contributions are subject to the limits for the last election in which the candidate sought the office for which the debt was incurred.

2. What limits apply to contributions received to retire debt?

Section 8-13-1318 states the contributions to retire debt must be "within the contribution limits applicable to the last election in which the candidate sought the elective office for which the debt was incurred." For example, if a candidate ran for the House of Representatives in 2002, and was involved in a primary, a runoff, and the general election, the candidate would have three election cycles. If he accrued debt during this time, he could retire that debt subject to Section 8-13-1318. However, the limits that would apply would be those during the third election cycle, the cycle for the general election. This would be the "limits applicable to the last election" since the general election would be the last election the candidate was in. Therefore, any contributions received would be subject to this $1000 contribution limit.

It should be noted, however, that if the campaign is indebted to the candidate for personal loans, after the campaign, the candidate may only be repaid $10,000 of the personal debt. Section 8-13-1328 states:

(A) A candidate for statewide office or the candidate's family member must not be repaid, for a loan made to the candidate, more than twenty-five thousand dollars in the aggregate after the election.

(B) A candidate for an elective office other than those specified in subsection (A) or a family member of a candidate for an elective office other than those specified in subsection (A) must not be repaid, for a loan made to the candidate, more than ten thousand dollars in the aggregate after the election.

3. Is there a time limit on when contributions to retire debt may be received?

The Ethics Act is silent in regards to the time limit for debt retirement. As long as any contributions received to retire the debt are subject to the contribution limits described above, the debt may be retired at any time.

4. What types of debt may be satisfied in this manner?

The Ethics Act does not specify any limitations on types of debt that may be satisfied in this manner. Therefore, contributions may be accepted to retire debts accrued as personal loans, banking loans, advancements, payments due, etc.

5. Can contributions received after a cycle has closed be credited to the closed cycle?

Contributions may be received after a cycle has closed and credited to that closed cycle pursuant to 8-13-1318 as stated above. However, the contributions may only be accepted subject to the contribution limits of the last election cycle of the election for the office which the candidate sought, as explained in Question #1.

House Legislative Ethics Committee

House of Representatives
P. O. BOX 11867 TELEPHONE 734-3114
ROOM 319 BLATT HOUSE OFFICE BUILDING
Columbia, SC 29211
FAX#: (803) 734-8793

MEMORANDUM

TO: MEMBERS OF THE HOUSE OF REPRESENTATIVES

FROM: HOUSE LEGISLATIVE ETHICS COMMITTEE

RE: ADVISORY OPINION RELATED TO THE USE OF CAMPAIGN FUNDS

DATE: MARCH 7, 2002

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee is issuing the following Advisory opinion for your information. This Opinion is binding as to House members and candidates effective immediately.

Advisory Opinion 2002-1

Issues:

May a member use campaign funds to purchase a ticket to an event held by a non-political organization if the member is invited only because of his or her status as a Representative? If so, what types of events could a member use campaign funds to purchase tickets for?

May a member use campaign funds to pay dues to a non-political organization if the member is invited to join the organization only because of his or her status as a Representative? If so, what types of organizations could a member use campaign funds to pay for membership dues?

Answer:

Members may purchase tickets and pay dues to non-political organizations with campaign funds even if the group is non-political in nature as long as the expenditure is sufficiently campaign related. Campaign funds may not be used to defray personal expenses which are unrelated to the campaign or the office. However, this prohibition does not extend to ordinary expenses incurred in connection with an individual's duties as a holder of an elective office (§8-13-1348). When a member is invited to a non-political function or is asked to join a non-political organization only because of the member's status as a Representative, the invitation could be considered sufficiently tied to the member's campaign or office such that campaign funds may be used. The candidate or member should use his or her discretion in determining whether or not an expenditure is sufficiently tied to the campaign or the office. However, the decision of the candidate or member is ultimately subject to review by the House Ethics Committee.

As a result of this opinion, members and candidates no longer have to comply with the restrictions set forth in Advisory Opinion 92-46 and in sections 5 and 6 of the permitted uses of campaign funds section of the "Laundry List Opinion" of 1995 requiring the events or organizations to be political in order for campaign funds to be properly used.

House Legislative Ethics Committee

House of Representatives
P. O. BOX 11867 TELEPHONE 734-3114
ROOM 119 BLATT HOUSE OFFICE BUILDING
Columbia, SC 29211
FAX#: (803) 734-8793

MEMORANDUM

DATE: May 11, 2000

TO: HOUSE MEMBERS AND CANDIDATES

FROM: HOUSE LEGISLATIVE ETHICS COMMITTEE

RE: ADVISORY OPINION RELATING TO USE OF CAMPAIGN FUNDS

Pursuant to House Rule 4.16 (s)(2), the House Legislative Ethics Committee is issuing the following Advisory Opinion for your information. This Opinion is binding as to House members and candidates and effective immediately.

Advisory Opinion 2000-1

Issue:

May members and candidates use campaign funds to pay late penalty fines incurred as a result of failing to file campaign disclosure forms and statements of economic interest before the established deadline pursuant to Section 8-13-1510 of the State Ethics Act?

Answer:

Members and candidates may not use campaign funds to pay late penalty fines incurred as a result of failing to file campaign disclosure forms and statements of economic interest before the established deadline. The Committee has determined that "these types of expenditures are not allowed because they are not related to the campaign or office as required by Section 8-13-1148 of the S.C. Code. These expenses are related more to a member's conduct. Furthermore,

to allow a member to pay his personal fines with campaign funds would be in violation of the spirit of the Ethics Act." (Informal Advisory Opinion, 1996.)

If the Committee receives a check for payment of a late fine that is drawn from the member or candidate's campaign account, the check will be returned immediately. If a check must be returned for this reason, the assessment of the $10 per day fine, which is assessed upon notification to the delinquent filer of his delinquency, will not be tolled and will continue to be assessed each day until payment is rendered from the member or candidate's personal funds or until a total fine of $500 has been assessed pursuant to Section 8-13-1510(2).

House Legislative Ethics Committee

House of Representatives
P. O. BOX 11867 TELEPHONE 734-3114
ROOM 519 BLATT HOUSE OFFICE BUILDING
Columbia, SC 29211
FAX#: (803) 734-8795

MEMORANDUM

TO: MEMBERS OF THE HOUSE OF REPRESENTATIVES

FROM: HOUSE LEGISLATIVE ETHICS COMMITTEE

RE: 1999 ADVISORY OPINIONS

DATE: APRIL 12, 2000

Pursuant to House Rule 4.16 (a)(2), the House Legislative Ethics Committee has provided for your information a brief synopsis of the advisory opinions issued by the Ethics Committee in 1999.

Advisory Opinion 99-1

Issue:

May members and candidates use campaign funds to make contributions to non-profit organizations if the contribution results in publication of the member's name in the organization's program?

Answer:

Except as provided for in Section 8-13-1370 (relating to final disbursement of campaign funds), members and candidates may use campaign funds to make contributions to non-profit organizations if the contribution results in publication of the member or candidate's name and public title or public office sought in the organization's

program, magazine, report or other type of published material. Such contributions qualify as campaign or office related advertising expenses under Section 8-13-1348(A) of the State Ethics Act.

As a result of this recent opinion, members and candidates no longer have to comply with additional advertising requirements found in Advisory Opinion 92-50. Advisory Opinion 92-50 required advertisements in publications by non-profit organizations to "facially reflect either a campaign message or inform constituents of an office related service or function." This opinion further states as follows:

> It is not enough to say that, since the publication reaches the constituency, it is office or campaign related. It must be apparent that the ad is either campaign or office related on its face. That is, members cannot contribute to a civic organization from their campaign account just because their names will appear in the published list of supporters which some of their constituents will see or just because the membership of that organization includes constituents of their district.

Now, however, a contribution to a non-profit organization is allowed as an office or campaign related advertising expenditure under Section 8-13-1348(A) if it results in publication of the member's name and public title or the candidate's name and public office sought.

Advisory Opinion 99-2

Issue:

May a member be employed by a consulting and public relations firm that manages election campaigns for federal, state and local offices and provides corporate communications/public relations services to lobbyist's principals?

Answer:

Nothing in the Ethics Act prevents a member from working for a consulting and public relations firm that manages campaigns for federal, state and local offices and provides consulting services to lobbyist's principals. Section 2-17-80 prevents a member from receiving "anything of value" from a lobbyist or anyone acting on behalf of a lobbyist. However the Ethics Act does not prohibit a member from providing services to and receiving payment for services from a lobbyist's principal or a consulting firm hired by lobbyist's principals.

While the Ethics Act does not prevent a member from providing services to lobbyist's principals, the Act does require certain disclosures if a conflict of interest should arise and may require other restrictions in a member's capacity as both a legislator and a consultant to lobbyist's principals. Section 8-13-700(A) prevents a legislator from knowingly using his office to obtain an economic interest for himself or a business with which he is associated. Section 8-13-700(B) requires the member to submit a written statement to the Speaker of the House of Representatives if the member was required to make a decision which affects an economic interest of himself or the business with which

he is associated and the nature of any potential conflict of interest. Section 8-13-710(A) requires a legislator who accepts anything of value from a lobbyist's principal to report the value of anything received on his statement of economic interests form. Section 2-17-100(G) prevents a lobbyist's principal from employing or retainer a public official. Other sections of the Ethics Act may be applicable to other similar positions depending on the responsibilities and duties of the position. This determination will be made on a case-by-case basis.

Advisory Opinion 99-3

Issue:

May a member purchase a computer or other permanent-type office equipment with campaign funds if such equipment is used for campaign or office related purposes?

Answer:

Members may purchase a computer, fax machine or other permanent-type office equipment with campaign funds if such equipment is used for campaign or office related purposes. This type of expenditure is proper under Section 8-13-1348(A) of the State Ethics Act. Furthermore, members are no longer required to keep permanent-type office equipment in their State Building office or district office; they may keep such equipment in an office used for private or business use. However, if a member is using the equipment for both personal and campaign/office related purposes, then he should purchase the equipment with personal funds and offset his costs with campaign funds proportionate to the amount of campaign or office uses. These expenditures must be reported on the member's campaign disclosure form. Upon final disbursement of a member's campaign funds and assets, he is still subject to proper accounting and disbursement of all his campaign funds and assets, including any permanent-type office equipment, as set forth in Sections 8-13-1368 and 8-13-1370 of the Ethics Act.

As a result of this recent opinion, members and candidates no longer have to comply with the restrictions on the purchase of permanent-type office equipment found in Advisory Opinions 92-3 and 92-51. Advisory Opinion 92-3 prohibited expenditures of campaign funds for furnishings or equipment which are located in an office which is also used for private or business use. Advisory Opinion 92-51 provides that "[p]ermanent type office equipment which will be of personal use after a member is no longer involved in campaigning and/or in office, should not be purchased with campaign funds, even if that equipment will be used purely for campaign or office related purposes . . . ."

House Legislative Ethics Committee

House of Representatives
P. O. BOX 11867 TELEPHONE 734-3114
ROOM 519 BLATT HOUSE OFFICE BUILDING
Columbia, SC 29211
FAX#: (803) 734-4795

MEMORANDUM

TO: MEMBERS OF THE HOUSE OF REPRESENTATIVES

FROM: HOUSE LEGISLATIVE ETHICS COMMITTEE

RE: 1998 ADVISORY OPINIONS

DATE: APRIL 21, 1999

Pursuant to House Rule 4.16 (a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of the advisory opinions issued by the Ethics Committee in 1998.

ADVISORY OPINION 98-1

Issues:

(1) If a House member works for a law firm that has a lobbyist's principal client, does the member have to report the relationship if his interest in the firm is less than five percent?

(2) If yes, what information must the member report?

Answers:

(1) Yes. Under Section 8-13-1130 of the Ethics Act, a member who works for a law firm must report the relationship between his firm and any lobbyist's principal that he knows has purchased goods or services in excess of two hundred dollars from his firm. Whether

the member has a five percent interest in the firm is irrelevant with regard to the reporting requirements under § 8-13-1130.

However, a member's duty to report is only triggered when he has actual knowledge of a relationship between his firm and a lobbyist's principal. If he is unaware of the relationship, no duty to report arises.

(2) In compliance with instruction eighteen of the statement of economic interests form, a member should report the type of goods and services purchased, the amount, from whom the material was purchased, and his relationship to that person or business.

ADVISORY OPINION 98-2

Issue:

For purposes of penalty assessment under Section 8-13-1510 of the Ethics Act, is notice of a delinquent report or statement "received" by a candidate when certified mail is sent, or upon physical receipt of the notification?

Answer:

Notice is given to the candidate when the certified mail is sent, not when a candidate actually receives it. Thus, the ten dollar a day penalty prescribed by § 8-13-1510(2) of the Ethics Act begins on the postmarked date of the notification letter.

ADVISORY OPINION 98-3

Issue:

May members of the House use campaign funds to contribute to the Strom Thurmond Monument Committee?

Answer:

Members may contribute campaign funds to the Strom Thurmond Monument Committee because this Committee may be characterized as a "political or partisan organization". Contributions to political or partisan groups are ordinary office related expenses permitted by § 8-13-1348 of the Ethics Act. *See* Advisory Opinion 92-3. The Ethics Committee determines whether an organization is political or partisan on a case by case basis. An organization is deemed political or partisan only if its *primary purpose* is political or partisan, rather than community service-oriented. *See* Advisory Opinion 92-3.